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# Standardised Contracting Terms

SC2

SC2 (Edn 12//22)

## General Conditions

### 1. General

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
  - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their 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 themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their 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 the winding-up of the company 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 they 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 the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. 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 its 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 Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

### 2. 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.

### **3. 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.

### **4. Governing Law**

a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.

b. Subject to clause 4.d and Condition 40 (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.

c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.

d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause 4.a, 4.b and 4.c shall be amended to read:

“a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.

b. Subject to Condition 40 (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 Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

(2) Clause 40.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration 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.”

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way 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.

f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as their agents to accept on their 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 the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

## **5. 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) Conditions 1 - 44 (and 45 - 47, if included in the 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 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 5.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 5.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 40 (Dispute Resolution).

## **6. Formal Amendments to the Contract**

a. Except as provided in Condition 31 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:

- (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used) and;
- (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.

b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.

c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:

- (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127.

Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643 (SC2); or

(2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

### **Changes to the Specification**

d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.

e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

### **7. 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 7.

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 6 (Formal Amendments to the Contract).

### **8. Severability**

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

(1) such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

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

### **9. 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.

### **10. 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.

### **11. 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.

## **12. Transparency**

a. Notwithstanding any other term of this Contract, including Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.

b. Subject to clause 12.c the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.

c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such Information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication on that basis, it will provide a clear statement to the public explaining the categories of information that have been excluded from publication and reasons for withholding that information.

d. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in clause 12.e to 12.i. Where the Authority publishes Transparency Information, it shall:

- (1) before publishing, 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 (FOIA) or the Environmental Information Regulations 2004 (EIR), for the avoidance of doubt, including Sensitive information;
- (2) taking account, the Sensitive Information set out in Schedule 5, consult with the Contractor where the Authority intends to publish Information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
- (3) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

## **Publishable Performance Information**

e. Within three (3) months of the effective date of Contract the Contractor shall provide to the Authority for its approval (such approval shall not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of Schedule 9.

f. If the Authority rejects any draft Publishable Performance Information the Contractor shall submit a revised version of the relevant KPI Data Report for further approval by the Authority with five (5) business days of receipt of any notice or rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have an agreed version of the Publishable Performance Information.

g. The Contractor shall provide an accurate and up-to-date version of the KPI Data Report to the Authority for each quarter at the frequency referred to in the agreed Schedule 9.

h. Any dispute in connection with the preparation and/or approval of Publishable Performance Information, other than under clause 12.f, shall be resolved in accordance with the dispute resolution

procedure provided for in this Contract.

i. The requirements of this Condition are in addition to any other reporting requirements in this Contract.

### **13. Disclosure of Information**

- a. Subject to clauses 13.d to 13.i and Condition 12 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 their 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 their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. A Party shall not be in breach of Clauses 13.a, 13.b, 13.f, 13.g and 13.h 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:
    - (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) 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. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
- (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) subject to clause 13.g below, 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 the Contract;
- (5) subject to clause 13.g below, 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. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with clauses 13.f.(4) or 13.f.(5) above, the Authority will endeavour to provide the Contractor with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under clause 13.f.(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.

h. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

i. 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 their 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.

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

#### **14. 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.

#### **15. (Information Redacted)**

#### **16. Environmental Requirements**

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



demand.

## **17. Contractor's Records**

a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.

b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

- (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
- (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to the provisions of Condition 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

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

whichever occurs latest.

## **18. 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 the recipient's Business Day and otherwise on the first Business Day of the recipient immediately 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.

## **19. 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 their 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.

**Supply of Contractor Deliverables****20. 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; and
  - (2) discharge their 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 20.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 they become 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.

**21. Marking of Contractor Deliverables**

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 22 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

**22. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)**

- a. Packaging responsibilities are as follows:
  - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
  - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
  - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
  - (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:

- (1) The Contractor shall provide Packaging which:
  - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
  - (b) is labelled to enable the contents to be identified without need to breach the package; and
  - (c) is compliant with statutory requirements and this Condition.
- (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
  - (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
  - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
  - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 22.i to 22.k.

c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

- (1) The Health and Safety At Work Act 1974 (as amended);
- (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
- (3) The REACH Regulations 2007 (as amended); and
- (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

- (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- (2) The Air Navigation (Amendment) Order 2019.

e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with Condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables).

f. The Contractor shall comply with the requirements for the design of MLP which include clauses 22.f and 22.g as follows:

- (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.
  - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

**(Information Redacted)**

(b) The MPAS Documentation is also available on the DStan website.

(2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).

(3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').

(4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

(5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

(6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

(7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 22.f.(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

(8) The documents supplied under clause 22.f.(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor or their Subcontractor is the PDA they shall:

(a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 22.f.

(b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:

- i. a list of all SPIS which have been prepared or revised against the Contract; and
- ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 22.g.(1)(b).

(2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

(3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 22.g.(1)(b).

(4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g.(1)(a) and 22.g.(1)(b).

h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.

i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

(1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:

(a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

(b) Each consignment package shall be marked with details as follows:

- i. name and address of consignor;
- ii. name and address of consignee (as stated in the Contract or order);
- iii. destination where it differs from the consignee's address, normally either:
  - (i). delivery destination / address; or
  - (ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
- iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
  - (i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 22.I.

(2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:

- (a) description of the Contractor Deliverable;
- (b) the full thirteen digit NATO Stock Number (NSN);
- (c) the PPQ;
- (d) maker's part / catalogue, serial and / or batch number, as appropriate;
- (e) the Contract and order number when applicable;
- (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
- (g) shelf life of item where applicable;
- (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
- (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
- (j) any additional markings specified in the Contract.

j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

- (1) the full 13-digit NSN;
- (2) denomination of quantity (D of Q);
- (3) actual quantity (quantity in package);
- (4) manufacturer's serial number and / or batch number, if one has been allocated; and
- (5) the CP&F-generated unique order identifier.

k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet).

l. The requirements for the consignment of aggregated packages are as follows:

- (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to

the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

- (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
  - (a) class group number;
  - (b) name and address of consignor;
  - (c) name and address of consignee (as stated on the Contract or order);
  - (d) destination if it differs from the consignee's address, normally either:
    - i. delivery destination / address; or
    - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
  - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
  - (f) the CP&F-generated shipping label; and
  - (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
- o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Condition 17 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
- u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

## **23. Plastic Packaging Tax**

- a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.
- d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- e. In accordance with Condition 17 the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
  - (1) confirmation of the tax status of any Plastic Packaging Component;
  - (2) documents to confirm that PPT has been properly accounted for;
  - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
  - (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 23.f above is accurate.
- h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

#### **24. Supply of Data for Hazardous Materials or Substances, Mixtures and Articles in Contractor Deliverables**

- a. Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. The Contractor shall provide to the Authority:
  - (1) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
  - (2) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
  - (3) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and/or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the Contractor, to allow safe use of the Article including, as a minimum, the name of that Substance.
- c. For Substances, Mixtures or Articles that meet the criteria list in clause 24.b above:



- (1) if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS/safety information and forward it to the Authority and to the address listed in clause 24.i below; and
  - (2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
- e. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- f. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details in Schedule 6 of:
- (1) activity; and
  - (2) the substance and form (including any isotope).
- g. If the Substances, Mixtures or Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details in Schedule 6 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 24.b.(1) and 24.c.(1), any information arising from the provisions of clauses 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Point of Contact as specified in the Schedule 3 as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet).
- i. So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
- (1) Hard copies to be sent to:  
**(Information Redacted)**
  - (2) Emails to be sent to:  
**(Information Redacted)**
- j. SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for OME are not to be sent to HSIS and must be held by the respective Authority Delivery Team.
- k. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substances, Mixtures or Articles in Contractor Deliverables shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.
- l. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

## **25. Timber and Wood-Derived Products**

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

- (1) shall comply with the Contract Specification; and
  - (2) must originate either:
    - (a) from a Legal and Sustainable source; or
    - (b) from a FLEGT-licensed or equivalent source.
- b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
- (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
  - (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
  - (3) safeguarding the basic labour rights and health and safety of forest workers.
- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.
- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- e. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).
- g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
- (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
  - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low-risk source, whether the Evidence submitted to it demonstrates compliance with clause 24.a or 24.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
- (1) verify the forest source of the timber or wood; and
  - (2) assess whether the source meets the relevant criteria of clause 25.b.
- i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Condition 6 (Formal Amendments to the Contract).
- j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).
- k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data

Requirements) may be amended by the Authority from time to time, in accordance with Condition 6 (Formal Amendments to the Contract).

- I. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
  - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at [www.forestry.gov.uk](http://www.forestry.gov.uk)) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
  - (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [www.fao.org](http://www.fao.org)).

## **26. Certificate of Conformity**

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.
- c. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).
- d. The Information provided on the CofC shall include:
  - (1) Contractor's name and address;
  - (2) Contractor unique CofC number;
  - (3) Contract number and where applicable Contract amendment number;
  - (4) details of any approved concessions;
  - (5) acquirer name and organisation;
  - (6) Delivery address;
  - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
  - (8) description of Contractor Deliverable, including part number, specification and configuration status;
  - (9) NATO Stock Number (NSN) (where allocated);
  - (10) identification marks, batch and serial numbers in accordance with the Specification;
  - (11) quantities;
  - (12) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

- e. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 26.d. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

## **27. Access to Contractor's Premises**

- a. 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 their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.

- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 27.a are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

## **28. Delivery / Collection**

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
- (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
  - (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
  - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
  - (4) be responsible for all costs of Delivery; and
  - (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
- (1) contact the Authority's Representative (Transport) as detailed in box 10 of Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
  - (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
  - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
  - (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
  - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or
  - (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

## **29. Acceptance**

- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:
- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
  - (2) the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.

### 30. Rejection and Counterfeit Materiel

#### Rejection:

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of the Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.

b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

#### Counterfeit Materiel:

c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:

- (1) notify the Contractor in writing of its suspicion and reasons therefore;
- (2) where reasonably practicable, and if requested by the Contractor within 10 Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
- (3) at its discretion, provide the Contractor with a sample of the Contractor Deliverable or consignment for validation or testing purposes by the Contractor (at the Contractor's own risk and expense);
- (4) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c.(2).(i) or the provision of a sample at 30.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
- (5) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel.

d. Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a and 30.b (Rejection), and provide written notification to the Contractor of the rejection.

e. In addition to its rights under 30.a and 30.b (Rejection), where the Authority has determined that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:

- (1) retain any Counterfeit Materiel; and/or
- (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;

and such retention shall not constitute acceptance under Condition 29 (Acceptance).

f. Where the Authority intends to exercise its rights under clause 30.e, the Contractor may, subject to the agreement of the Authority (and at the Contractor's own risk and expense and subject to any reasonable controls and timeframe agreed), arrange for:

- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
- (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is reasonably satisfied does not contain Counterfeit Materiel.

g. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.e, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.f but the Contractor fails to do so within the period agreed and subject to clause 30.k, the Authority shall be entitled to exercise any, all, or any combination of, the

following rights:

- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
- (2) to pass it to a relevant investigatory or regulatory authority;
- (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall, at the discretion of the Authority, be shared with the Contractor; and/or
- (4) to recover the appropriate, attributable, and reasonable costs incurred by the Authority in respect of testing, storage, access, and/or disposal of it from the Contractor;

and exercise of the rights granted at clauses 30.g.(1) to 30.g.(3) shall not constitute acceptance under Condition 29 (Acceptance).

h. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.g.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.g.(4) then the balance shall accrue to the Contractor.

i. The Authority shall not use a retained Contract Deliverable or consignment other than as permitted in clauses 30.c – 30.k.

j. The Authority may report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

k. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 30.c – 30.k except:

- (1) in relation to the balance that may accrue to the Contractor in accordance with clause 30.h; or
- (2) where it has been determined in accordance with Condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 30.c.(5). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

### **31. Diversion Orders**

a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

c. The Authority reserves the right to cancel the Diversion Order.

d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

### **32. Self-to-Self Delivery**

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to their own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

### **Licences and Intellectual Property**

### 33. Import and Export Licences

a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

(1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

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

(b) the end use as: For the Purposes of HM Government; and

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

c. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

(1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

(2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.

i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.

j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

- (1) a non-UK export licence, authorisation or exemption; or
- (2) any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 34 (Third Party Intellectual Property – Rights and Restrictions).

l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to clause 33.k.(1) or 33.k.(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

m. If the information to be provided under clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clause 33.l.

n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.

o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clause 33.l or 33.m of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export

an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.

p. Where following receipt of materiel from a Subcontractor or any of their other suppliers restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 10 days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 10 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.



q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

r. In the event that the restrictions notified to the Authority pursuant to clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with clause 33.l, termination under clause 33.q will be in accordance with Condition 43 (Material Breach) and the provisions of clause 33.v will not apply.

s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of clause 32.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.

t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

u. Where:

- (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to clauses 33.s or 33.t or both; or
- (2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Formal Amendments to the Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of Condition 42 (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

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

a. The Contractor and, where applicable any Subcontractor, 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 34.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 34.a has been notified previously, the Contractor may meet their 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 Condition 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 1949;
- (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 34.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 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 34.a, 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, their 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 34.a.

k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.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, their 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 34.a – 34.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 34.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 their 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 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

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

#### Notification of Intellectual Property Rights (IPR) Restrictions

r. Where any of the conditions listed below (1 to 3) have been added to the Conditions of the Contract as project specific DEFCONs at Clause 45, or where required by Clauses 34.a. - 34.q., the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 10 (Notification of Intellectual Property Rights (IPR) Restrictions).

(1) DEFCON 15 - including notification of any self-standing background Intellectual Property;

(2) DEFCON 90 - including copyright material supplied under clause 5;

(3) DEFCON 91 - limitations of Deliverable Software under clause 3b.

- s. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 10.
- t. Any amendment to Schedule 10 shall be made in accordance with Condition 6.

### **Pricing and Payment**

#### **35. 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 clause 35.a 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.

#### **36. Payment and Recovery of Sums Due**

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 36.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 36.a and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36.c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

#### **37. 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 supply of 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 their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3)

Business Days of receiving the decision.

d. Where supply of 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. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.

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 within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.

f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractors input VAT (or similar EU or Non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall then be resolved in accordance with Condition 40 (Dispute Resolution).

g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

### **38. Debt Factoring**

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 11 (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 38 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f;
- (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 38.b and 38.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 38.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 38.a.(1) and 38.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 clauses 38.a.(1) and 38.a.(2).

d. The provisions of Condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

### **39. Subcontracting and Prompt Payment**

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a subcontract, they shall cause a term to be included in such subcontract:
  - (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
  - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
  - (3) providing that where the Contractor fails to comply with clause 39.b.(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b.(2) after a reasonable time has passed; and
  - (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 39.b.(1) to 39.b.(4).

### **Termination**

### **40. 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 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.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.

### **41. Termination for Insolvency or Corrupt Gifts**

#### **Insolvency:**

- a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:
 

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- (6) where the Contractor is either unable to pay their 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 their debts if:
  - (a) they have failed to comply with or to set aside a Statutory demand under Section 268

of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or

(b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

(7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

(9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(10) the court making an administration order in relation to the company; or

(11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(12) the company passing a resolution that the company shall be wound-up; or

(13) the court making an order that the company shall be wound-up; or

(14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 41.a.(9) to 41.a.(14) inclusive above.

b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

#### **Corrupt Gifts:**

c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):

(1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

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

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

(2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

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

(1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

(2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and

(3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

e. In exercising its rights or remedies under this Condition, 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 performing, the prohibited act;
- (2) give all 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 their behalf;
  - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.

f. Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

#### **42. Termination for Convenience**

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

b. Following the above notification, the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

- (1) not start work on any element of the Contractor Deliverables not yet started;
- (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
- (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b.(2) and 42.b.(3) of this Condition.

c. Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 42.b):

- (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
  - (a) in the possession of the Contractor at the date of termination; and
  - (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
- (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
  - (a) all such unused and undamaged materiel; and
  - (b) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

- (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

d. The Authority shall (subject to clause 42.e below and to the Contractor's compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the

Contractor by reason of the termination of the Contract, subject to:

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
- (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:

- (1) the name of the Contractor shall be substituted for the Authority except in clause 42.c.(1);
- (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and
- (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 42.

g. Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

#### **43. Material Breach**

a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.

b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

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

#### **44. 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.

## **45 Project specific DEFCONs and DEFCON SC variants that apply to this Contract**

### **DEFCON 14**

DEFCON 14 (Edn. 06/03) - Inventions and Designs Crown Rights And Ownership Of Patents And Registered Designs

### **DEFCON 15**

DEFCON 15 (Edn. 06/21) - Collaboration - Ownership of Patents And Registered Designs

### **DEFCON 16**

DEFCON 16 (Edn. 10/04) - Repair And Maintenance Information

### **DEFCON 21**

DEFCON 21 (Edn. 10/04) – Retention Of Records

### **DEFCON 23**

DEFCON 23 – (Edn. 06/21) - Special Jigs, Tooling And Test Equipment

### **DEFCON 76 (SC2)**

DEFCON 76 (SC2) (Edn. 11/22) - Contractor's Personnel At Government Establishments

### **DEFCON 82**

DEFCON 82 (Edn. 06/21) - Special Procedure For Initial Spares

### **DEFCON 90**

DEFCON 90 (Edn. 11/06) – Copyright

### **DEFCON 91**

DEFCON 91 (Edn. 11/06) - Intellectual Property Rights In Software

### **DEFCON 126**

DEFCON 126 (Edn. 06/21) – International Collaboration

### **DEFCON 127**

DEFCON 127 (Edn. 06/21) - Price Fixing Condition For Contracts Of Lesser Value

### **DEFCON 532A (SC2)**

DEFCON 532A (SC2) (Edn. 05/22) – Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

### **DEFCON 601 (SC)**

DEFCON 601 (SC) (Edn. 03/15) - Redundant Material

### **DEFCON 602A (SC2)**

DEFCON 602A (SC2) (Edn 04/23) Quality Assurance (With Deliverable Quality Plan)

### **DEFCON 611 (SC2)**

DEFCON 611 (SC2) (Edn. 12/22) – Issued Property

### **DEFCON 624 (SC2)**

DEFCON 624 (SC2) (Edn. 08/22) - Use of Asbestos

**DEFCON 637**

DEFCON 637 (Edn 05/17) - Defect Investigation and Liability

**DEFCON 658 (SC2)**

DEFCON 658 (SC2) (Edn. 10/22) – Cyber - Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Low, as defined in Def Stan 05-138.

**DEFCON 659A**

DEFCON 659A (Edn 09/21) - Security Measures

**DEFCON 660**

DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements

**DEFCON 681**

DEFCON 681 (Edn. 06/02) - Decoupling Clause - Subcontracting with The Crown

**DEFCON 694 (SC2)**

DEFCON 694 (SC2) (Edn. 07/21) - Accounting for Property Of The Authority

**DEFCON 812**

DEFCON 812 (Edn. 04/15) Single Source Open Book

**DEFCON 814 (SC2)**

DEFCON 814 (SC2) (Edn. 04/15) Single Source Confidentiality of Open Book and Reporting Information

**DEFCON 815**

DEFCON 815 (Edn. 04/15) Single Source Non-Qualifying Contracts - Contract Pricing Statement

## 46. Special conditions that apply to this Contract

### 46.1 Proprietary Items

- a. Software and Hardware Items listed at Schedule 20 to the Contract are those which are accepted by the Authority, for the purposes of S2117 as proprietary to the Contractor or a third party.
- b. In connection with this Contract, an item will be accepted by the Authority as being proprietary where it comprises a separately identifiable piece of software/hardware which the Contractor can demonstrate has been designed and developed by or for the Contractor or a third party supplier or Subcontractor entirely without funding from the United Kingdom Government and where the Authority has not acquired user rights in the design.
- c. Such a Proprietary Item will be considered by both parties for inclusion at Schedule 20 provided the Proprietary Item is to be incorporated into S2117 in the form in which it exists prior to the Contract being let without significant modification or further development under this or any other Authority contract.
- d. The Contractor shall make available to the Authority, copies of the Third-Party proprietary software listed in Schedule 20, for use under the Contract. The Contractor is responsible for the procurement and the costs of any necessary Proprietary Software Licences.
- e. The Contractor should also make available to the Authority copies of the Contractor's own proprietary software listed at Schedule 20 for use under the Contract.

### 46.2 Quality Assurance Requirements

- a. In addition to the general conditions of Contract, the following Standards, Specifications, and quality assurance requirements shall apply to this Contract.

<b>AQAP 2110</b>	Edition D Version 1, dated June 2016	NATO Quality Assurance requirements for design, development and production.
<b>AQAP 2210</b>	Edition A Version 2, dated September 2015	NATO supplementary Software Quality Assurance Requirement.
<b>AQAP 2105</b>	Edition C, dated January 2019	NATO requirements for deliverable quality plan.
<b>Def Stan 00-051</b>	Parts 1 & 2 Issue 2, dated 28 <sup>th</sup> November 2021,	Environmental Management Requirements for Defence Systems - Requirements and Guidance
<b>Def Stan 05-57</b>	Issue 8, dated 28 <sup>th</sup> March 2022.	Configuration Management of Defence Material
<b>Def Stan 05-61</b>	Part 1 - Issue 7, dated 28 <sup>th</sup> November 2021.	Concessions
<b>Def Stan 05-099</b>	Part 1, dated July 2017	Managing Government Furnished Equipment in Industry

- b. For the purposes of this Contract the Contractor shall maintain their Quality Management System (QMS) in accordance with ISO 9001: 2015 and AQAP 2110 for the duration of the Contract. In the event of the Contractor's ISO certification expiring, they should inform the Authority's Commercial officer (identified at Box 1 of the DEFFORM 111) immediately and confirm the steps being taken to achieve their re-certification.

c. Quality Records: Quality Control/Inspection and Test Records shall be retained by the Contractor for a minimum period of 10 years from completion of all work under the Contract, all other records shall be subject to the normal provisions of Condition 18 – Contractor's Records.

d. Quality Assurance Authority (QAA)/Representative (QAR)/Project Quality Assurance Officer (PQAO): The MCS Project Quality Focal Point (QAFP) for this contract is **(Information Redacted)**. All references to the MoD QAA/QAR in documents which form part of this contract shall be interpreted as referring to the Authority's Project Manager (APM) or their authorised representative on Quality Assurance matters.

e. Any agreement of a Quality Plan does not signify the Authority's acceptance of ability for its accuracy, suitability or acceptability. Acceptance of the Contractor's Quality Plan (in accordance with AQAP 2105) only signifies acknowledgement of the Contractor's contractual intention and its methods of managing quality throughout the life of the project; however, it will only be amended by mutual agreement.

f. Concessions: Failure to satisfy the specified technical requirements will normally result in rejection by the Authority, notwithstanding the Authority's rights under Condition 30 – Rejection. Exceptionally, if the Contractor is able to demonstrate that the granting of a concession is of benefit to the Authority, applications should be completed and presented to the PQAO in accordance with the requirements of Def Stan 05-61 (Part 1).

g. If a Contractor proposes to deliver, or embody, a non-conforming product, no such delivery or embodiment is to take place until such time as the representative of the Authority has agreed a Concession in accordance with the requirements of Def Stan 05-61, notwithstanding the Authority's rights under Condition 30 – Rejection. Any Concessions raised under the Contract shall be co-ordinated through the PQAO shown at Box 7 of DEFORM 111.

### **46.3 Obsolescence**

a. In the event of obsolescence in the Articles, the Contractor shall use reasonable endeavours to identify an alternative Article and submit sufficient details to the APM to enable the suitability of the alternative Article(s) to be assessed.

b. The Contractor shall give the Authority six months' notice of his intention to discontinue manufacture/supply of an Article covered by the arrangement to enable the Authority to formulate its final requirement.

### **46.4 Technical Publications**

a. The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication called for under the Contract or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose.

b. For the purposes of this Contract, the term Technical Publication shall include all equipment support publications, handbooks, user guides, user manuals, repair and maintenance manuals and the like. The terms of this Condition are not applicable to technical reports or manufacturing documentation or drawings.

### **46.5 Operational Damage**

a. The Contractor and the Authority shall judge whether any damage incident is to be considered as "Operational Damage".

b. Operational Damage is deemed to be a damage event, and which is outside the reasonable control of the Contractor including, but not limited to:

i. Damage to or failure of equipment caused by mishandling or misuse and/or maintainer/operator error and/or use by non-authorised or suitably trained personnel.

- ii. Damage to equipment caused by either poor ship handling or other third party.
- iii. Damage caused by severe weather except where the equipment could reasonably be expected, or had been designed, to cope with such extremes.
- iv. Equipment damaged or lost due to an Operational decision by the command.
- v. Damage due to an act of war.
- vi. Damage due to vandalism or negligence
- vii. Attrition and losses
- c. The cost of resolution of Operational Damage is excluded from the Contract.
- d. The authorisation for repair or replacement of equipment due to operational damage shall be a Task Approval Form (TAF) in accordance with Schedule 14.

#### **46.6 Configuration Control**

- a. Unless otherwise advised by the APM in writing, the Contractor shall supply the Articles under the Contract to the latest build standard agreed with the Authority.
- b. In the event of the Contractor wishing to amend the build standard of the articles to be supplied under the Contract, he shall in the first instance, advise the APM and the Authority's Commercial Officer, prior to implementation of the proposed changes, in writing and await agreement of a formal Contract Amendment.
- c. If any Article offered for evaluation does not comply with the requisite standards, any cost associated with changes in design, materials, or other matters to achieve the requisite standards shall be borne entirely by the Contractor.

#### **46.7 Contract Termination and Exit Strategy**

- a. The Parties recognise the importance of timely planning to ensure that, following expiry or termination of the Contract, there is a seamless and effective transition to alternative support arrangements. The Authority may require the Contractor to assist in the implementation of such alternative support arrangements following expiry or termination of the Contract; the extent of such assistance, and the terms applicable, shall be mutually agreed between the Parties.
- b. The Authority shall appoint a Project Manager to oversee the Exit Strategy.
- c. The Authority's Project Manager will liaise with the Contractor to agree a timetable of actions necessary to either transfer the Project back to the Authority's control or to a Third-Party Contractor nominated by the Authority.
- d. The Contractor shall use reasonable endeavours to include in all subcontracts an option for the Authority to novate, replicate or transfer such sub-Contracts in respect of termination under this condition. In such circumstances, the Authority will either novate the subcontracts or negotiate new contracts. Where supplies of equipment, sub-assemblies, etc. are the subject of orders with the Contractor which had either been completed or would not be economic to terminate, the Authority may opt to procure such items from the Contractor at the direct cost of such items plus the agreed recoveries in accordance with the Contractor's QMAC or fair and reasonable overhead recovery agreed with the Authority.
- e. In the event of termination in accordance with condition 43, the Authority shall have the right to use all information in whatever format generated or used by the Contractor specifically for the purposes of managing and administering this Contract and necessary for the Authority and/or a Third-Party Contractor to manage the Contract. The Authority's right of use of the information shall be limited to a period that is the same as the duration of the Contract.
- f. Where the Contract is not renewed by the Authority or terminated in accordance with condition 42 then such rights to information shall be limited to information deliverable under the Contract and in accordance with the rights that the Authority has under the Contract to use such information and excludes rights to the Contractor's proprietary information or Third-Party proprietary information.
- g. Where the Contract is to be terminated or the Authority seeks to place a contract with a third party on expiry of this Contract to provide in service support for any equipment under the

scope of this contract, then the Authority and such third party shall provide the Contractor with a written undertaking that the Contractor's information provided under paragraph (e) above shall be protected and not used by such third party other than for the purposes of managing and administering the contract or for the purposes of a similar contract between the Authority and such third party.

h. The Contractor shall provide training to the Authority or Third-Party Contractor in the operation of data information management systems. The Price to be agreed for such training will be on the basis of the Contractor's agreed rates for the period.

i. Upon the Contractor's receipt of the Authority's formal written notice of termination the Authority will be deemed to have overall responsibility for managing the Project Exit Strategy. The Contractor shall remain responsible for all aspects of the Contractor's performance of the contract for the period of notice to the date of contract termination.

j. Payment. The Contractor shall be paid in accordance with the Contract for all work satisfactorily completed under the Contract to the date of contract termination. Where work is required to be undertaken in support of the exit strategy which is in addition to the scope of the Contract then the scope and price for the additional work will be agreed with the Authority prior to commencement of the work. The additional work may be either covered within the existing Contract or a separate order.

k. Step-In Rights. In the event of

i. The Contractor being unwilling or unable either to continue with the Contract or accept a follow-on Contract from the Authority for the continuing provision of the services which are the subject of this Contract, or

ii. The Contractor permanently discontinuing its business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and such business is not continued by a successor in interest to the Contractor to whom the relevant intellectual property rights have been transferred

then the Authority shall have the right to obtain from the Contractor, or from the authorised trustees or receivers acting on behalf of the Contractor, sufficient of the Contractors Management Information as to permit the Authority to continue the efficient operation of the Support Service. The Authority shall have the right for the period of one calendar year from the date when the Management Information, sufficient for the Authority to continue the efficient operation of the Support Service, is received by the Authority, to use or have used the Management Information for this purpose.

#### **46.8 Access, Audit and Inspection**

a. The Authority's rights of Access, Audit and Inspection shall be deemed to extend to the Contractor's internal system for controlling and progressing of all work under the Contract and the related accounting and invoicing arrangements. If deemed necessary, any Audit would be undertaken at a corporate level.

b. The Authority shall give the Contractor at least 7 days advance written notice of its intention to audit his project management procedures, procurement, accounting and invoicing arrangements.

c. The Contractor shall arrange for the APM and his representatives to have reasonable access to the premises where the work under the Contract is being undertaken and to technical information relevant to the Contract for the purposes of monitoring progress of the work under the Contract.

d. Visits by the APM or his representatives to Sub-Contractors shall only be made after consultation with the Contractor.

e. The above sub-conditions shall in no way limit the rights of access, inspection or audit of the PQAO or his representative.

f. The Contractor shall provide to the Authority throughout the Term of this Contract the following:

i. Other financial details and accounts as the Authority may reasonably require.



- ii. Right of access to the Contractor's source data (including computerised records and data) used in the preparation of any of the information or reports generated under this Contract.

#### **46.9 Disclosure of Information**

Without prejudice to the Authority's obligations of confidentiality under Clause 13.f.4 of Condition 13 – Disclosure of Information, where a circumstance arises that the Authority may need to disclose information to a non-Government body the Authority will discuss such requirement with the Contractor, and the final decision to disclose the information shall be mutually agreed.

#### **46.10 Commercial Exploitation**

a. The Contractor shall, subject to security considerations, be expected to enter into an exclusive Commercial Exploitation Agreement with the Authority if he wishes to sell any new Articles arising from TAFs under the Contract to a third party. Sub-contractors shall enter into an agreement with the Authority in the standard format for "Design Rights and Patents (Sub-Contractor's) Agreement" at Contract Schedule 16.

b. Articles designed or modified under the Contract, or derivatives thereof, shall be subject to the Terms and Conditions of the Commercial Exploitation Agreement between BAE Systems Integrated System Technologies Limited and the Authority, Ref CEL Agreement **(Information Redacted)** dated 2nd September 2005.

#### **46.11 Authorisation by The Crown for Use of Third-Party Intellectual Property Rights**

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

#### **46.12 Force Majeure**

a. On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party within 72 hours. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party.

b. The Contractor shall, within ten (10) Working Days following such notification provide the Authority, in writing, with details of any action proposed to mitigate the effect of the Force Majeure Event.

c. As soon as practicable following notification under 46.12.a, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

d. The Parties, shall at all times, following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all reasonable steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

e. Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. The Authority shall

not be entitled to terminate this Contract under Clause 43.a (Material Breach) if the circumstances arise from a Force Majeure Event.

f. If the Affected Party is the Contractor, the Contractor shall only be entitled to receive payment for the Services that continue to be performed in accordance with the terms of this Contract

g. The Affected Party shall notify the other Party as soon as reasonably practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event. Following such notification the Parties shall perform all obligations under this Contract.

h. Relief from liability for the Affected Party under this Clause 46.12 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 46.12.h.

i. Termination on the basis of Force Majeure Event(s)

If no such terms pursuant to Clause 46.12.c are agreed on or before the date falling 120 days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than 180 days, then either Party (the "Notifying Party") may give the other Party no less than thirty (30) days written notice (such written notice period being the "FM Period") that the Notifying Party wishes the Contract to terminate on the basis of the occurrence of such Force Majeure Event at the end of the FM Period.

j. If the Contractor gives notice to the Authority under Clause 46.12.j that the Contractor wishes the Contract to terminate, then the Authority has the option of either to accept such termination or to respond in writing on or before the date falling ten (10) Working Days after the date of its receipt stating that it requires the Contract to continue. If the Authority gives the Contractor such notice of continuance, then:

- i. the Authority shall pay to the Contractor the charges from the date on which this Contract would have terminated under Clause 46.4.j, as if the Services were being provided in full (save that, where and to the extent the Contractor's delivery of any Services is not affected by the Force Majeure Event, nothing in this Clause 46.12.k shall operate to affect the Authority's entitlement to make KPI retentions in the period during which the Force Majeure Event is subsisting); and
- ii. the Contract shall not terminate on the basis of the occurrence of such Force Majeure Event.

l. If:

- i. the Contractor gives notice to the Authority under Clause 46.12.j that the Contractor wishes the Contract to terminate on the basis of the occurrence of such Force Majeure Event and the Authority accepts such termination in writing; or
- ii. the Authority gives the Contractor no less than twenty (20) Working Days written notice that the Authority wishes this Contract to terminate on the basis of the occurrence of such Force Majeure Event, this Contract shall, subject to Clause 46.12.m, terminate on such basis at the end of the relevant notice's FM Period.

m. If any right to terminate this Contract is exercised under this Clause 46.12 the Parties shall comply with the provisions of Clause 42.12 (2).

## **46.13 Limitations On Liability**

### **Definitions**

- a. In this Condition [46.13] the following words and expressions shall have the meanings

given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

- i. UK GDPR;
- ii. DPA 2018; and
- iii. the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

‘DPA 2018’ means the Data Protection Act 2018;

“Law” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body.

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in [cross refer to service credit regime in the contract];

“Term” means the period commencing on [the commencement date / the date on which this Contract is signed / the date on which this Contract takes effect: 1<sup>st</sup> October 2024 to 30<sup>th</sup> September 2027, unless 2-year option evoked by the Authority, and or on earlier termination of this Contract.

‘UK GDPR’ means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

### **Unlimited liabilities**

b. Neither Party limits its liability for:

- i. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- ii. fraud or fraudulent misrepresentation by it or its employees;
- iii. breach of any obligation as to title implied by section 12 of the Sale of Goods Act

1979 or section 2 of the Supply of Goods and Services Act 1982; or

iv. any liability to the extent it cannot be limited or excluded by law.

c. The financial caps on liability set out in Clauses 46.13.d and 46.13.e below shall not apply to the following:

i. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:

1. the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and Condition 34 (Third Party IP – Rights and Restrictions);

2. Not used.

ii. for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:

1. the Authority's indemnity under DEFCON 514 (Material Breach);

2. Not used.

iii. breach by the Contractor of DEFCON 532A (SC2) and Data Protection Legislation; and

iv. to the extent it arises because of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

x. For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 (SC2) or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clauses 46.13.d and/or 46.12.e below.

## Financial limits

d. Subject to Clauses 46.13.b and 46.13.c and to the maximum extent permitted by Law:

i. [throughout the Term] the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

1. in respect of Condition 43b (**Information Redacted**) in aggregate;

2. in respect of DEFCON 611 (SC2) (**Information Redacted**) in aggregate; and

ii. without limiting Clause 46.13.d.i and subject always to Clauses 46.13.b, 46.13.c and 46.13.d.iii, the Contractor's total liability throughout the Term in respect of all other liabilities whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be (**Information Redacted**) in aggregate;

iii. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 46.13.d.i and 46.13.d.ii above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim

up to the full value of the limitation set out in Clauses 46.13.d.i and 46.13.d.11 of this Contract.

e. Subject to Clauses 46.13.b, 46.13.c and 46.13.f, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

f. Clause 46.13.e shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

### **Consequential loss**

g. Subject to Clauses 46.13.b, 46.13.c and 46.13.h, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- i. indirect loss or damage;
- ii. special loss or damage;
- iii. consequential loss or damage;
- iv. loss of profits (whether direct or indirect);
- v. loss of turnover (whether direct or indirect);
- vi. loss of business opportunities (whether direct or indirect); or
- vii. damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

h. The provisions of Clause 46.13.g shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

- i. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
  - 1. to any third party;
  - 2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
  - 3. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- ii. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- iii. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable

for the relevant Contractor Deliverables);

- iv. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- v. damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);
- vi. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- vii. any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- viii. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- ix. any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

### **Invalidity**

- i. If any limitation or provision contained or expressly referred to in this Condition [46.13] is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition [46.13].

### **Third party claims or losses**

- j. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and Condition 34 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

- i. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
- ii. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

### **No double recovery**

- k. Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

**46.14 Contractor's Records Confidentiality**

- a. Further to condition 17, Contractor's Records, the Contractor may require the Authority to procure that any non-governmental third party acting on behalf of the NAO performing services requiring access to relevant records that relate to the contractual obligations to supply goods or services under the Contract will enter into a confidentiality agreement with the Contractor prior to disclosure of such relevant records which contain Commercially Sensitive Information. The Contractor shall act promptly and reasonably to put in place any confidentiality agreement to ensure no impact to any audit timeline.
- b. The above text shall not set a precedence in regard to a non-disclosure agreement having to be agreed. If a new Contractor's Records condition 17 of Standardised Contracting Template 2 is agreed between the two parties, it shall be incorporated through Contract amendment.

**46.15 (Information Redacted)****46.16 Key Performance Indicators****Performance Measurement and Monitoring**

- a. Payment for the performance element of the quarterly contract payments against the Key Performance Indicators (KPIs) at Schedule 9 shall be claimed quarterly post receipt of a progress report.
- b. The KPIs are measured quarterly/three monthly using data submitted by the Contractor on the Progress Report. The proportion of the contract price for Items 1 & 2 of the Schedule of Requirements (SoR) are subject to performance payment every three months is set out in the Core Payment Plan at Schedule 12. The withholding of a performance payment under the following conditions constitutes a remedy for performance that is measured below the required standard as detailed in the KPIs. Scores for KPIs will be calculated in accordance with Schedule 9 by aggregating performance from each KPI to form an overall performance band.
- c. Where a KPI Performance Band shows an Approaching Target level of performance and the previous Contracts quarterly KPI Performance Band was Approaching Target the value of the performance payment retained in the previous quarterly period shall cease to be available for payment and shall be permanently deducted from the total Contract Price.
- d. Where a KPI Performance Band shows a Requires Improvement level of performance and the previous Contracts quarterly KPI Performance Band was Requires Improvement the value of the performance payment retained in the previous quarterly period shall cease to be available for payment and shall be permanently deducted from the total Contract Price.
- e. Where a KPI Performance Band was either Requires Improvement or Approaching Target in the previous Contracts quarterly period and improvement has been made in the current Contract quarterly period (i.e. performance has move to a higher band than previous quarterly period) the previous quarterly retention shall be released.
- f. The Authority and the Contractor agree that any deduction in any quarterly payment calculated in accordance with this Clause 46.16 (Key Performance Indicators) has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Authority in relation to each or any breach by the Contractor of any KPI.
- g. The retention percentages of the quarterly core payment values are detailed in Schedule 9 (KPI).
- h. Performance payments in any quarterly period will be dependent on the latest quarterly period's performance and comparison with the previous quarterly period as follows:

Indicator for latest reported quarterly period	Effect on Performance Payment for latest reported quarterly period	Indicator for previous quarterly period	Effect of this quarterly period's performance on previous quarterly period's retained performance payment.
<b>GOOD</b>	Full payment of Performance payment element for the KPI	<b>GOOD</b>	Performance payment was paid in full last quarterly period
		<b>APPROACHING TARGET</b>	Retention for Approaching Target held last quarterly period is now released and claimed by Contractor
		<b>REQUIRES IMPROVEMENT</b>	Retention for Requires Improvement performance held last quarterly period is now released and claimed by Contractor
		<b>INADEQUATE</b>	Retention for Inadequate performance is deducted from Contract Price.
<b>APPROACHING TARGET</b>	MoD withholds Retention for "Approaching Target" performance pending assessment of next quarterly period's performance.	<b>GOOD</b>	Performance payment was paid in full last quarterly period
		<b>APPROACHING TARGET</b>	Retention for Approaching Target performance held last quarterly period is now deducted from Contract Price.
		<b>REQUIRES IMPROVEMENT</b>	Retention for Approaching Target held last quarterly period is now released and claimed by Contractor
		<b>INADEQUATE</b>	Retention for Inadequate performance is deducted from Contract Price.
<b>REQUIRES IMPROVEMENT</b>	MoD withholds Retention for "Requires Improvement" performance pending assessment of next quarterly period's performance.	<b>GOOD</b>	Performance payment was paid in full last quarterly period
		<b>APPROACHING TARGET</b>	Retention for Approaching Target performance held last quarterly period is now deducted from Contract Price.
		<b>REQUIRES IMPROVEMENT</b>	Retention for Requires Improvement performance held last quarterly period is now deducted from Contract Price.
		<b>INADEQUATE</b>	Retention for Inadequate performance is deducted from Contract Price.
<b>INADEQUATE</b>	MoD withholds Retention for "Inadequate" performance and is deducted from Contract Price	<b>GOOD</b>	Performance payment was paid in full last quarterly period
		<b>APPROACHING TARGET</b>	Retention for Approaching Target performance held last quarterly period is now deducted from Contract Price



		<b>REQUIRES IMPROVEMENT</b>	Retention for Requires Improvement performance held last quarterly period is now deducted from Contract Price
		<b>INADEQUATE</b>	Retention for Inadequate performance is deducted from Contract Price

#### 46.17 Pricing

- a. The prices payable by the Authority to the Contractor in respect of the provision of the Line Items listed in the Schedule of Requirements (SoR) and the Articles and Services set out in the Contract shall be as detailed against each Item in the prices column of the SoR. All prices are in accordance with the Assumptions contained within Schedule 18 to the Contract.
- b. The Firm Prices for Core In-Service Support Activities for Contract Years 1 – 3 and Firm Prices for 2 Year Option for Contract Years 4 & 5 as specified in the SoR Line Items 1, 2, 3 & 4 shall be fully inclusive of all royalties, licences, labour, material, packaging, delivery and expenses required to carry out all work under the Contract in accordance with the Terms and Conditions but exclusive of VAT.
- c. Items 3 & 4 of the SoR are subject to an optional Limit of Liability and are not considered part of the contract core support.
- d. Firm Prices for Additional Tasking as stated in the SoR Line Item 5 shall be agreed using the rates at Annex 13 (Contract Rates) prior to issue of a formal authorisation of the Additional Task i.a.w Clause 47.1 (Supplementary Tasking).
- e. All prices are pounds sterling (£).

#### 46.18 Options

- a. The Authority reserves the right to exercise the irrevocable Contract Option as specified in SoR items 2, 3 & 4.
- b. The irrevocable Contract option detailed at Clause 46.18 (Options) shall remain valid for exercising, and the Authority shall have the right to exercise any of the irrevocable Contract option(s) at any time from the Effective Date until 3 (three) months before the Contract Option is specified to commence (June 2027).

#### 46.19 Cyber

- a. A Cyber Risk Assessment for this Contract has been undertaken and the level of Cyber Risk has been determined as: **(Information Redacted)**
- b. The Unique Serial Number of the Cyber Risk Assessment for this Contract is **(Information Redacted)**
- c. The Contractor must comply with DEFCON 658 (Cyber) and DEF STAN 05-138 (Cyber Security for Defence Suppliers).
- d. The Contractor should complete a Cyber Supplier Assurance Questionnaire using the tool at the following link:

[Supplier Cyber Protection service \(supplier-cyber-protection.service.gov.uk\)](https://supplier-cyber-protection.service.gov.uk)

This must be completed by the Contractor no less than once in each year of the Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire.

## 47. The processes that apply to this Contract are

### 47.1 Supplementary Tasks

- a. A supplementary Task Authorisation Form (TAF), found at Schedule 15 shall be used to authorise work under SOR Item 3. The instructions to raise a TAF are as follows:
  - i. Part 1 Scope of Proposed TAF shall be raised by the Authority (or the contractor following discussion with the Authority) for specific tasks and shall be completed to show the Task Number, Task Title, scope and details of the task.
  - ii. Part 2 of the TAF shall be completed and signed on behalf of the Contractor by an authorised representative within 20 Business Days of receipt of Part 1. It shall include timescales for the Additional Tasking and a Firm Price offer supported by a detailed breakdown of the proposed charging for the Additional Tasking using the charging rates as detailed at Annex 13 to the Contract. The price breakdown shall detail all costs associated with the Additional Tasking including, but not limited to; labour rates and hours, sub-contract costs, materials costs, overheads and profit broken down against each element of the Additional Tasking. It shall also give details of any Government Furnished Assets (GFA) that may be required to complete the task. The TAF together with the price breakdown shall be returned to the Authority for consideration within the agreed turnaround time.
  - iii. Part 3 Task Acceptance/Rejection shall be completed by the Authority, and the Contractor issued with a CP&F Purchase Order Reference Number, confirming Firm Price offer.
  - iv. Part 4 Task Completion is to be completed by the Contractor to notify the Authority of task completion.
- b. A copy of the Supplementary Task Authorisation Form (TAF) is at Annex 14 to the Contract.
- c. When including Travel and Subsistence the Contractor must include details of the assumptions made about travel and the rates used. Claims for T&S should be in line with the Civil Service Code which states civil servants must ensure “public money and other resources are used efficiently”, for example travel should be the most economic option available.
- d. In the event that a stage payment plan is deemed appropriate for a specific Task, the Contractor may propose a stage payment plan as part of its quotation. Stage payments shall be tied to deliverables and the achievement of key milestones, the value of each payment shall be commensurate with the effort undertaken to meet that milestone with a retention of at least 20% of the total value of the task payable upon final completion of all requirements under that task. Should no payment plan be agreed, payment shall be made upon completion of the task. The Authority is under no obligations to agree to a stage payment plan.
- e. The Contractor is to maintain a register of all supplementary Tasks, which will be reviewed during progress meetings with the Authority.

## SC2 Schedules

### Schedule 1 - Definitions of Contract

<b>Article</b>	means, in relation to clause 24 and Schedule 6 only, an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;
<b>Articles</b>	means (except in relation to Schedule 10) 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. <b>(This definition only applies when DEFCONs are added to these Conditions);</b>
<b>Authority</b>	means the Secretary of State for Defence acting on behalf of the Crown;
<b>Authority's Project Manager (APM)</b>	The person/persons referenced at Section 2. Of the DEFFORM 111.
<b>Authority's Representative(s)</b>	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 Condition 7;
<b>Business Day</b>	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
<b>Central Government Body</b>	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: <ul style="list-style-type: none"> <li>a. Government Department;</li> <li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c. Non-Ministerial Department; or</li> <li>d. Executive Agency;</li> </ul>
<b>Collect</b>	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed

	in accordance with Clause 28.c and Collected and Collection shall be construed accordingly;
<b>Commercial Packaging</b>	means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)
<b>Conditions</b>	means the terms and conditions set out in this document;
<b>Consignee</b>	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
<b>Consignor</b>	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or collected;
<b>Contract</b>	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Formal Amendments to the Contract);
<b>Contract Price</b>	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.
<b>Contractor</b>	means the person who, by the Contract, undertakes to supply 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 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;
<b>Contractor Deliverables</b>	means the 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;
<b>Control</b>	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none"> <li>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</li> <li>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</li> </ul> <p>and a change of Control occurs if a person who Controls the</p>

	Contractor ceases to do so or if another person acquires Control of the Contractor;
<b>CPET</b>	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;
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>Dangerous Goods</b>	means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the: <ul style="list-style-type: none"> <li>a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);</li> <li>b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);</li> <li>c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);</li> <li>d. International Maritime Dangerous Goods (IMDG) Code;</li> <li>e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;</li> <li>f. International Air Transport Association (IATA) Dangerous Goods Regulations.</li> </ul>
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at <a href="https://www.kid.mod.uk">https://www.kid.mod.uk</a> ;
<b>DEF STAN</b>	means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;
<b>Deliver</b>	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with Condition 28 and Delivered and Delivery shall be construed accordingly;
<b>Delivery Date</b>	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;
<b>Denomination of Quantity (D of Q)</b>	means the quantity or measure by which an item of material is managed;

<b>Design Right(s)</b>	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
<b>Diversion Order</b>	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);
<b>Effective Date of Contract</b>	means the date upon which both Parties have signed the Contract;
<b>Evidence</b>	means either: <ul style="list-style-type: none"> <li>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</li> <li>b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;</li> </ul>
<b>Firm Price</b>	means a price (excluding VAT) which is not subject to variation;
<b>FLEGT</b>	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;
<b>Government Furnished Assets (GFA)</b>	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
<b>Hazardous Contractor Deliverable</b>	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;
<b>Independent Verification</b>	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
<b>Information</b>	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;

<b>Issued Property</b>	means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;
<b>Legal and Sustainable</b>	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;
<b>Legislation</b>	means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, or any exercise of Royal Prerogative;
<b>Military Level Packaging (MLP)</b>	means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
<b>Military Packager Approval Scheme (MPAS)</b>	is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
<b>Military Packaging Level (MPL)</b>	shall have the meaning described in Def Stan 81-041 (Part 1);
<b>Mixture</b>	means a mixture or solution composed of two or more substances;
<b>MPAS Registered Organisation</b>	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;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
<b>NATO</b>	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
<b>Notices</b>	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Overseas</b>	shall mean non UK or foreign;
<b>Packaging</b>	Verb. The operations involved in the preparation of materiel for;

	<p>transportation, handling, storage and Delivery to the user;</p> <p>Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;</p>
<b>Packaging Design Authority (PDA)</b>	<p>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;</p>
<b>Parties</b>	<p>means the Contractor and the Authority, and Party shall be construed accordingly;</p>
<b>Plastic Packaging Components</b>	<p>shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;</p>
<b>PPT</b>	<p>means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;</p>
<b>PPT Legislation</b>	<p>means the legislative provisions set out in Part 2 and Schedule 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;</p>
<b>Primary Packaging Quantity(PPQ)</b>	<p>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, as described in Def Stan 81-041 (Part 1);</p>
<b>Publishable Performance Information</b>	<p>means any of the Information in Schedule 9 (KPI Data Report) as it relates to Key Performance Indicator where it is expressed as publishable in the table in Schedule 9 which shall not contain any Information which is exempt from disclosure which shall be determined by the Authority; and which shall not constitute Sensitive Information;</p>
<b>Recycled Timber</b>	<p>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:</p> <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> <p>it excludes sawmill co-products;</p>
<b>Robust Contractor</b>	<p>shall mean Robust items as described in Def Stan 81-041 (Part 2)</p>



**Deliverables**

<b>Safety Data Sheet</b>	has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);
<b>Schedule of Requirements</b>	means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;
<b>Sensitive Information</b>	means the Information listed in the completed Schedule 5 (Contractor's Sensitive Information), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;
<b>Short-Rotation Coppice</b>	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;
<b>Specification</b>	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, and shall include any document or item which, individually or collectively is referred to in Schedule 2 (Schedule of Requirements). The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification;
<b>STANAG4329</b>	means the publication NATO Standard Bar Code Symbolologies which can be sourced at <a href="https://www.dstan.mod.uk/faqs.html">https://www.dstan.mod.uk/faqs.html</a> ;
<b>Subcontractor</b>	means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;
<b>Substance</b>	means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;
<b>Timber and Wood-Derived</b>	means timber (including Recycled Timber and Virgin Timber but

<b>Products</b>	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;
<b>Transparency Information</b>	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, except for (i) any Information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information;
<b>Virgin Timber</b>	means Timber and Wood-Derived Products that do not include Recycled Timber.

Where project specific DEFCONs are included under Condition 45 definitions shall be in accordance with DEFCON 501.

**Annex to Schedule 1**

**Additional Definitions of Contract iaw. Conditions 45 - 47 (Additional Conditions)**

**Schedule 2 - Schedule of Requirements**

<b>MINISTRY OF DEFENCE</b>		
<b>CONTRACTOR:</b> BAE Systems Surface Ships Limited <b>(Information Redacted)</b>	<b>SCHEDULE OF REQUIREMENTS FOR:</b>  <b>Supply of Sonar 2117 In Service Support</b>	<b>CONTRACT No:</b> 708753450
<b>Contract Issued:</b> 01 October 2024		<b>Previous Contract No:</b> 700282325

**Table of Requirements**

<b>Item No</b>	<b>Description</b>	<b>Firm Price (Ex VAT)</b>
1	Provision of In-Service Support for Environmental Risk Management Capability (Sonar) ERM(S), as detailed in the Statement of Work at Schedule 11 of the Contract, for the period 1 <sup>st</sup> October 2024 to 30 <sup>th</sup> September 2027.	<b>(Information Redacted)</b>
2	Firm Price Option - Provision of In-Service Support for Environmental Risk Management Capability (Sonar) ERM(S), as detailed in the Statement of Work at Schedule 11 of the Contract, for the period 1 <sup>st</sup> October 2027 to 30 <sup>th</sup> September 2029, as detailed under clause 46.18.	<b>(Information Redacted)</b>
3	Optional Limit of Liability for Sonar 2117 Laptop Capability Continuation for the period 1st October 2024 to 30th September 2027, as detailed under clause 46.18.	<b>(Information Redacted)</b>
4	Continuation of Optional Limit Of Liability for Sonar 2117 Laptop Capability Continuation for the period 1st October 2027 to 30th September 2029, as detailed under clause 46.18.	<b>(Information Redacted)</b>
5	Provision of support outside of the scope of Items 1 & 2 of this Contract via Supplementary Tasking as and when required.	Firm Prices to be agreed in accordance with Condition 46.17 – Pricing, using the rates specified in Schedule 13 – Contractor Agreed Rates

**Schedule 3 - Contract Data Sheet**

<b>General Conditions</b>
<p><b>Condition 2 – Duration of Contract:</b></p> <p>The Contract expiry date shall be: 30<sup>th</sup> September 2027, unless 2 year option evoked by the Authority.</p>
<p><b>Condition 4 – Governing Law:</b></p> <p>Contract to be governed and construed in accordance with: English Law</p> <p>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 4.g (if applicable) are as follows:</p> <p>N/A</p>
<p><b>Condition 7 – Authority’s Representatives:</b></p> <p>The Authority’s Representatives for the Contract are as follows:</p> <p>Commercial: <b>(Information Redacted)</b></p> <p>Project Manager: <b>(Information Redacted)</b></p>
<p><b>Condition 18 – Notices:</b></p> <p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: <b>(Information Redacted)</b></p> <p>Contractor: BAES Combat Systems, <b>(Information Redacted)</b></p> <p>Notices can be sent by electronic mail.</p>
<p><b>Condition 19.a – Progress Meetings:</b></p> <p>The Contractor shall be required to attend the following meetings: Annual Progress Meetings (can be conducted online)</p>

**Condition 19.b – Progress Reports:**

The Contractor is required to submit the following Reports:

Progress Reports: Quarterly (three monthly)

Reports shall be Delivered to the following address:

**(Information Redacted)**

**Supply of Contractor Deliverables****Condition 20 – Quality Assurance:**

Please see clause 46.2 for quality standards within the contract.

Is a Deliverable Quality Plan required for this Contract?

Yes

If yes:

A Deliverable Quality Plan is required in accordance with DEFCON 602A (SC2)

If required, the Deliverable Quality Plan and/or Deliverable Quality Plan with Assurance Information must be delivered to the Authority (Quality) within 90 Days of Contract Award.

Other Quality Requirements:

N/A

**Condition 21 – Marking of Contractor Deliverables:**

Special Marking requirements: Secret (UK Eyes Only – Where applicable)

**Condition 24 - Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables:**

A completed Schedule 6 (Hazardous and Non-Hazardous Substances, Mixture or Articles Statement), and if applicable, UK REACH compliant 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) Defence Safety Authority – **(Information Redacted)**

to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable.

**Condition 25 – Timber and Wood-Derived Products:**

A completed Schedule 7 (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, as per box 1 of DEFFORM 111) to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable.

**Condition 26 – Certificate of Conformity:**

Is a Certificate of Conformity required for this Contract?

Yes

Applicable to Line Items: **(Information Redacted)**

If required, does the Contractor Deliverables require traceability throughout the supply chain?

Yes

Applicable to Line Items: **(Information Redacted)**

**Condition 28.b – Delivery by the Contractor:**

The following Line Items are to be Delivered by the Contractor:

**(Information Redacted)**

Special Delivery Instructions:

Special Recorded as applicable

Each consignment is to be accompanied by a DEFFORM 129J.

**Condition 28.c - Collection by the Authority:**

The following Line Items are to be Collected by the Authority:

N/A

**Condition 30 – Rejection:**

The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:

The time limit for rejection shall be 30 (thirty) Days.

**Condition 32 – Self-to-Self Delivery:**

Self-to-Self Delivery required?

No

**Pricing and Payment****Condition 35 – Contract Price:**

All Schedule line items shall be FIRM Price other than those stated below:

Line Items: 2 (as per clause 46.18)

**Termination****Condition 42 – Termination for Convenience:**

The Notice period for terminating the Contract shall be twenty business (20) days.

**Other Addresses and Other Information** *(forms and publications addresses and official use information)*

See DEFFORM 111



**Schedule 4 - Contract Change Control Procedure (i.a.w. Clause 6b)  
Contract Change Control Procedure (i.a.w. clause 6.d) for Contract No: 708753450**

**Authority Changes**

1. The Authority shall be entitled to propose any change to the Contract (a "Change") or (subject to Clause 2) Changes in accordance with this Schedule 4.
2. Nothing in this Schedule shall operate to prevent the Authority from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

**Notice of Change**

3. If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "Authority Notice of Change") on the Contractor.
4. The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clauses 7 to 9 (inclusive).
5. The Contractor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):
  - a. would, if implemented, require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable law relevant to such delivery; and/or
  - b. would, if implemented, cause any existing consent obtained by or on behalf of the Contractor in connection with their obligations under the Contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Contractor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
  - c. would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract;

and:

- d. the Contractor notifies the Authority within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c providing written evidence for the Contractor's reasoning on the matter; and
- e. further to such notification:
  - (1) either the Authority notifies the Contractor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Contractor that the Authority disputes the Contractor's notice under Clause 5.d) it is determined in accordance with Condition 40 (Dispute Resolution), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c; and
  - (2) (where the Authority either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change) to remove the Contractor's grounds

for refusing to implement the relevant Change under Clauses 5.a, 5.b and/or 5.c within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after:

- i) the date on which the Authority notifies in writing the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c); or
- ii) the date of such determination.

6. The Contractor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

### **Contractor Change Proposal**

7. As soon as practicable, and in any event within:

a. (where the Contractor has not notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5) fifteen (15) Business Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contract shall have received the Authority Notice of Change; or

b. (Where the Contractor has notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5 and:

(1) the Authority has agreed with the Contractor's conclusion so notified or it is determined under Condition 40 (Dispute Resolution) that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c and the Authority has made sufficient adjustments to the relevant Authority Notice of Change (and issued a revised Authority Notice of Change(s)) to remove the Contractor's grounds for refusing to implement the relevant Change(s) under Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contractor shall have received such revised Authority Notice of Change; or

(2) the Authority has disputed such conclusion and it has been determined in accordance with Condition 40 (Dispute Resolution) that the relevant Change(s) is/are not a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date of such determination,

the Contractor shall deliver to the Authority a Contractor Change Proposal. For the avoidance of doubt, the Contractor shall not be obliged to deliver to the Authority a Contractor Change Proposal where the Contractor notifies the Authority, and the Authority agrees or it is determined further to such notification in accordance with Clause 5, that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c.

8. The Contractor Change Proposal shall comprise in respect of each and all Change(s) proposed:

- a. the effect of the Change(s) on the Contractor's obligations under the Contract;
- b. a detailed breakdown of any costs which result from the Change(s);

- c. the programme for implementing the Change(s);
- d. any amendment required to this Contract as a result of the Change(s), including, where appropriate, to the Contract Price; and
- e. such other information as the Authority may reasonably require.

9. The price for any Change(s) shall be based on the prices (including rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change(s).

### **Contractor Change Proposal – Process and Implementation**

10. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

- a. evaluate the Contractor Change Proposal; and
- b. where necessary, discuss with the Contractor any issues arising (and (in relation to a Change(s) proposed by the Authority) 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 shall have agreed in writing) after receipt of such modification, submit an amended Contractor Change Proposal.

11. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

- a. either indicate its acceptance of the Change Proposal by issuing a DEFFORM 10B in accordance with Condition 6 (Formal Amendments to the Contract), whereupon the Contractor shall promptly sign and return to the Authority the Contractor's DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Condition and implement the relevant Change(s) in accordance with such proposal; or
- b. serve Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such notice of change shall have no further effect).

12. If the Authority rejects the Contractor Change Proposal, it shall not be obliged to give its reasons for such rejection.

13. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 11a. and then subject only to the terms of the Contractor Change proposal so accepted.

### **Contractor Changes**

14. If the Contractor wishes to propose a Change or Change(s), they shall serve a Contractor Change Proposal on the Authority. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Clauses 8 to 13 (inclusive).

**Schedule 5 - Contractor's Commercial Sensitive Information Form (i.a.w. condition 12)****Contract No: 708753450**

Contract No: 708753450
Description of Contractor's Sensitive Information: <b>(Information Redacted)</b>
Cross Reference(s) to location of Sensitive Information: <b>(Information Redacted)</b>
Explanation of Sensitivity: <b>(Information Redacted)</b>
Details of potential harm resulting from disclosure: <b>(Information Redacted)</b>
Period of Confidence (if applicable): 10 years
Contact Details for Transparency / Freedom of Information matters: <b>(Information Redacted)</b>

**Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract**

**Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract (i.a.w. Condition 24): Data Requirements for Contract No: 708753450**

**Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement by the Contractor**

Contract No: 708753450

Contract Title: Sonar 2117 In Service Support

Contractor: BAE Systems

Date of Contract: 01/10/2024

\* To the best of our knowledge there are no hazardous Substances, Mixtures or Articles in the Contractor Deliverables to be supplied.

\* To the best of our knowledge the hazards associated with Substances, Mixtures or Articles in the Contractor Deliverables to be supplied under the Contract are identified in the Safety Data Sheets or UK REACH Communication attached in accordance with Condition 24.

Contractor's Signature: (Information Redacted)

Name: **(Information Redacted)**

Job Title: **(Information Redacted)**

Date: **(Information Redacted)**

\* delete as appropriate

.....

To be completed by the Authority

Domestic Management Code (DMC): [                      ]

NATO Stock Number: [                      ]

Contact Name: [ ]

Contact Phone Number: [ ]

Contact Address: [ ]

Copy to be forwarded to:

**(Information Redacted)**

Email: **(Information Redacted)**

**Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract****Timber and Wood- Derived Products Supplied under the Contract: Data Requirements for Contract No: 708753450**

The following information is provided in respect of condition 25 (Timber and Wood-Derived Products):

<b>Schedule of Requirements item and timber product type</b>	<b>Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence</b>	<b>Volume of timber Delivered to the Authority with other evidence</b>	<b>Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy</b>	<b>Total volume of timber Delivered to the Authority under the Contract</b>
N/A	N/A	N/A	N/A	N/A

**Schedule 8 - Acceptance Procedure (i.a.w. condition 29)**

- a. Acceptance – SoR Lines 1, 2, 3 & 4 (Schedule 2) – Acceptance is delivery of all aspects of In-Service Support (ISS) Statement of Work (SoW), (Schedule 11) that are applicable at each milestone (when payment of the Quarterly stage payment will be made).
- b. Acceptance – SoR Line 5 (Schedule 2) – Acceptance is completion of subject Ad Hoc/supplementary task against agreed scope as defined in SoW (Schedule 11) Item 8. Software update task(s) will be specific in nature and will conclude with full Factory Acceptance test (FAT) and Harbour Acceptance Trial (HAT) | The Ad Hoc Task will define the specific acceptance criteria within the task scope (to ensure they will fit for purpose).



**SC2 – Schedule 9 – Key Performance Indicators - Publishable Performance Information Key Performance Indicator Data Report (i.a.w. Condition 12) for Contract No: 708753450 – Only affects Items 1 & 2 of the SoR.**

KPI Description	Rating Thresholds	Retention Percentage	Frequency of Measurement	Quarterly/Three-Month Period and Year	Average for Reporting Period	Rating	Comment
<b>REL1</b> - Rolling monthly OPDEF average over 6-month period	Good – <3	(Information Redacted)	Quarterly (October-December, January-March, April-June & July-September)				
	Approaching Target – 3	(Information Redacted)					
	Requires Improvement – 4	(Information Redacted)					
	Inadequate – >5	(Information Redacted)					
<b>FIX1</b> - 48 hours to provide technical advice and solution to platform with OPDEF	Good– <2 instances in 6-month reporting period	(Information Redacted)	Quarterly (October-December, January-March, April-June & July-September)				
	Approaching Target – 2 instances in 6-month reporting period	(Information Redacted)					
	Requires Improvement – 3 instances in 6-month reporting period	(Information Redacted)					

	Inadequate – 4 or greater instances in 6-month reporting period	(Information Redacted)					
<b>DOC1</b> - Acknowledge request for required document production within 5 days with estimated delivery date	Good – <5 days of agreed date	(Information Redacted)	Quarterly (October-December, January-March, April-June & July-September)				
	Approaching Target – 5-6 days from agreed date	(Information Redacted)					
	Requires Improvement – 7-9 days from agreed date	(Information Redacted)					
	RED – 10 or greater days from agreed date	(Information Redacted)					

\*Publishable fields. Please note, of the four Rating Thresholds, only the 'Good' threshold is published. Please see the [DEFFORM 539B Explanatory Notes](#) for guidance on completing the KPI Data Report.

**SC2 – Schedule 10 – Notification of Intellectual Property Rights (IPR) Restrictions****Schedule 10 – Notification of Intellectual Property Rights (IPR) Restrictions for Contract No.****PART A – Notification of IPR Restrictions**

1. <u>ITT / Contract Number</u>				
2. <u>ID #</u>	3. <u>Unique Technical Data Reference Number / Label</u>	4. <u>Unique Article(s)* Identification Number / Label</u>	5. <u>Statement Describing IPR Restriction</u>	6. <u>Ownership of the Intellectual Property Rights</u>
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Please continue additional sheets where necessary.

\* Article(s), for the purpose of this form only, means part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.

## **PART B – System / Product Breakdown Structure (PBS)**

The Contractor should insert their PBS here. For Software, please provide a Modular Breakdown Structure.

(Please see the [DEFFORM 711 Completion Notes](#) for guidance on completing the Notification of Intellectual Property Rights (IPR) Restrictions form)

## **Schedule 11 - Statement of Work**

See Excel Document 708753450 Schedule 11 - S2117 - SOW

## **Schedule 12 - Payment Plan**

See Excel Document – 708753450 Schedule 12 - S2117 Payment Plan

**Schedule 13 - Rates**  
**(Information Redacted)**

## **Schedule 14 - DEFFORM 815 - Contract Pricing Statement**

See Excel Document – 708753450 Schedule 14 - S2117 DEFFORM 815



**Schedule 15 - Task Authorisation Form for Contract Number 708753450**

**Note: Please ensure the TAF Version Control is maintained on the TAF register**

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**PART 1 – REQUIREMENT**

*(Completed by the Authority)*

<b><u>CONTRACT NUMBER:</u></b>	<b><u>TASK NUMBER:</u></b>	<b><u>VERSION:</u></b>
<p>You are hereby requested to provide a <b>Firm / Fixed / Limit of Liability</b> <i>delete as appropriate</i>) Price Proposal for the below requirement. Your Proposal should be submitted in accordance with clause of the Ts&amp;Cs.</p>		
<b><u>TASK TITLE:</u></b>		
<b>TASK REQUIREMENT(S)</b> <i>(Insert detailed description of the requirement – to be written by assigned Technical representative)</i>		
<p><i>Ensure all relevant stake holders have been consulted,</i></p> <p><i>Refer to the associated Tasking Authorisation Form Guidance, Appendix 2 to for Key considerations</i></p>		
		<b>REQMNT TIMESCALE / COMPLETION DATE</b>

<b>Does this Task include any Task-specific Terms, or Quality Standards / Requirements</b>	<p><i>Required-by Date:</i></p> <p><i>Completion Date / Duration:</i></p>	
<p>Record any task specific terms, conditions, quality standards ect here.</p> <p>For example, if both DEFCONS below are in the overarching contract you may wish to specify which one applies.</p> <p><i>DEFCON 621A (Edn 12/21) - Transport (If the Authority Is Responsible For Transport) or,</i></p> <p><i>DEFCON 621B (Edn 12/21) - Transport (If the Contractor Is Responsible For Transport)</i></p> <p><b>*INCLUSION OF ANY QUALITY REQUIREMENTS/STANDARDS, DEFCONS, AND/OR IP CONSIDERATIONS NOT PROVIDED FOR IN THE MAIN CONTRACT WILL REQUIRE A CONTRACT AMENDMENT * YOU MAY WISH TO CONSULT WITH CLS BEFORE PROCEEDING.</b></p>	<b>Requirement Owner's Name and Sign.:</b>	
	<p><b>Date:</b></p>	
	<b>Commercial Officer's Name and Sign.:</b>	
<p><b>Additional Signatures can be added here if required:</b></p>	<p><b>Date:</b></p>	
	<b>Finance Officers Name and Sign</b>	
	<p><b>Date:</b></p>	
	<p><b>For tasks including Inventory:</b></p>	
	<b>SCM Officer Name and Sign</b>	

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**PART 2 – PROPOSAL**  
*(Completed by the Contractor)*

- a. **Proposed Solution, incl. (but not limited to):**
- Deliverables.
  - Assumptions, Exclusions and Dependencies.
  - GFA requirements.
  - ASSC (Export Control / ITAR implications;) and
  - Potential IPR generated / flow-down of IP to third party

	<b><u>TASK NUMBER:</u></b>	<b><u>VERSION:</u></b>
<b>WOULD THIS TASK SOLUTION IMPACT THE CORE SERVICE PROVISION?</b> YES <input type="checkbox"/> NO <input type="checkbox"/>		

**b. Price & Payment**

A **Firm / Fixed / LoL** (*Authority to delete as appropriate*) Price of £ (ex-VAT) is quoted for the performance of this Task.

The Price Breakdown, comprising Labour, Materials, T&S and any QDC provisions (where appropriate), is attached.

The Payment Plan is as follows: (*delete if not appropriate i.e., in instances of one-off payment-on-completion*)

<b>Milestone:</b>	<b>Price:</b>	<b>Claimed Upon:</b>
<i>E.g.: 1. Delivery of Requirement 1 &amp; 2 Hardware</i>	<i>£98,463.60</i>	<i>Signed acceptance certificate</i>

**c. Completion Date**

A completion date of is given for this Task.

This Task Proposal is open and valid until

**Electronically Signed** (Name and post):  
*On behalf of* (Contractor)

**Date:**

**PART 3 – APPROVALS AND AUTHORITY TO PROCEED***(Completed by the Authority)***The following approvals relate to TAF Proposal Version , dated****a. Project approval**

The timescale and level of work reported in the Contractor's Proposal are acceptable for this Task. I am content that the hours, material/sub-contract costs and T&S quoted are fair and reasonable, and commensurate with the work to be undertaken. All GFA requirements necessary to complete this Task (where applicable) have been agreed. All necessary approvals (BC, CC etc.) have been attained and stored in the Contract file (if applicable).

A completion date of is agreed for this Task.

Project Manager approval is hereby given for this Task.

**Electronically Signed** (Name and post):

**Date:**

**b. Finance approval**

Financial approval is hereby given for this Task.

**Electronically Signed** (Name and post):

**Date:**

**c. For Tasking including Inventory items**

SCM approval is hereby given for this Task.

**Electronically Signed** (Name and post):

**Date:**

**d. Commercial approval**

Commercial approval is hereby given, and you are authorised to proceed with this Task at a **Firm / Fixed / LoL** (delete as appropriate) Price of £ (ex-VAT), in accordance with the following agreed Payment Plan.

<b>Milestone:</b>	<b>Price:</b>	<b>Claimed Upon:</b>
<i>E.g.: 1. Delivery of Requirement 1 &amp; 2 Hardware</i>	<i>£98,463.60</i>	<i>Signed acceptance certificate</i>

All other Terms and Conditions of the Contract remain unchanged.

This Task is placed under Schedule of Requirements line item

The Purchase Order (PO) number for this Task is

**Electronically Signed** (Name and post):

**Date:**

\*Tasking Distribution list can be added here

**PART 4 – TASK COMPLETION**

**a. Notification of completion of Task** *(to be completed by the Contractor)*

All work on this Task is complete and all deliverables have been dispatched.

I hereby notify the Authority that the above Task was completed on

**Electronically Signed** (Name and post):

*On behalf of* (Contractor)

**Date:**

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**b. Confirmation of completion of Task** *(to be completed by the Authority Requirement Owner)*

I confirm that all work on the above Task has been completed to the satisfaction of DT.

I confirm that the completion date for this Task was , and that the approved payments can be made to the Contractor.

**Electronically Signed** (Name and post):

**Date:**

(Copy to: DT – Commercial)



2. No extension alteration or variation in the terms of the sub-contract between the main contractor and the sub-contractor and no other agreement between the main contractor and the sub-contractor relating to the work to be done under the sub-contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the sub-contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the sub-contract and the expression "the sub-contract items" shall have effect accordingly.

IN WITNESS whereof the parties hereto have set their hands the day and years first before written

Signed on behalf of  
the Sub-Contractor

(in capacity of )

Signed on behalf of  
The Secretary of  
State for Defence



## THE FIRST SCHEDULE

The Sub-Contract Items are:-

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## THE SECOND SCHEDULE

The Clauses which apply to this Agreement are:-

To be  
inserted as  
appropriate

except that:

- (i) Where "the Contractor" is stated "the Sub-Contractor" shall be substituted.
- (ii) Where "the Authority" is stated "the Secretary of State" shall be substituted.
- (iii) Where "Contract" is stated "sub-contract" shall be substituted.
- (iv) Where "sub-contractor" is stated "further sub-contractor" shall be substituted.
- (v) Where "sub-contract" is stated "further sub-contract" shall be substituted

**Schedule 17 - DEFFORM 315 (Edn. 12/19)****CONTRACT DATA REQUIREMENT**

<u>1. ITT/Contract Number</u>  708753450	<u>2. CDR Number</u>  1	<u>3. Data Category</u>  Manufacture & modification	<u>4. Contract Delivery Date</u>  
<u>5. Equipment/Equipment Subsystem Description</u>  Sonar 2117 ERM(S) – Environmental Risk Management Capability (Sonar)		<u>6. General Description of Data Deliverable</u>  Data Pack sufficient for the purpose	
<u>7. Purpose for which data is required</u>  Through life support of ERM(S) software  Competitive tendering for 3rd party software production and /or modification, where the Contractor is not able to perform or is unwilling to accept a contract for the production and /or modifications required on fair and reasonable terms.		<u>8. Intellectual Property Rights</u>  <u>a. Applicable DEFCONs</u>  DEFCON 15 (Edn 06/21) Design Rights and Rights to Use Design Information  DEFCON 16 (Edn 10/04) Repair and Maintenance Information  DEFCON 21 (Edn 10/04) Retention of Records  <u>b. Special IP Conditions</u>  DEFCON 91 (Edn 11/06) IPR in Software	
<u>9. Update/Further Submission Requirements</u>  Data to be updated in accordance with the latest build standard of the equipment.			
<u>10. Medium of Delivery</u>  <b>(Information Redacted)</b>		<u>11. Number of Copies</u>  <b>(Information Redacted)</b>	

**Schedule 17 - DEFFORM 315 (Edn. 12/19)****CONTRACT DATA REQUIREMENT**

1. <u>ITT/Contract Number</u>  708753450	2. <u>CDR Number</u>  2	3. <u>Data Category</u>  Operation & Training	4. <u>Contract Delivery Date</u>  
5. <u>Equipment/Equipment Subsystem Description</u>  Sonar 2117 ERM(S) – Environmental Risk Management Capability (Sonar)		6. <u>General Description of Data Deliverable</u>  Data Pack sufficient for the purpose	
7. <u>Purpose for which data is required</u>  Through life support of ERM(S) software  To permit S2117 operation and/or training by a 3rd party supplier/organisation.		8. <u>Intellectual Property Rights</u>  <u>a. Applicable DEFCONs</u>  DEFCON 15 (Edn 2/98) Design Rights and Rights to Use Design Information  DEFCON 16 (Edn 10/04) Repair and Maintenance Information  DEFCON 21 (Edn 10/04) Retention of Records  <u>b. Special IP Conditions</u>  DEFCON 91 (Edn 11/06) IPR in Software	
9. <u>Update/Further Submission Requirements</u>  Data to be updated in accordance with the latest build standard of the equipment			
10. <u>Medium of Delivery</u>  (Information Redacted)		11. <u>Number of Copies</u>  (Information Redacted)	

**Schedule 18 - Commercial Exploitation Agreement (Software)**

Copy of existing CEA - **(Information Redacted)** to be inserted prior to contract award.

**Schedule 19 - Personal Data Particulars****DEFFORM 532**

Edn 10/19

This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

<b>Data Controller</b>	<p>The Data Controller is the Secretary of State for Defence (the Authority).</p> <p>The Personal Data will be provided by:</p> <p><b>(Information Redacted)</b></p>
<b>Data Processor</b>	<p>The Data Processor is the Contractor.</p> <p>The Personal Data will be processed at:</p> <p><i>[insert address(es) and contact details]</i></p>
<b>Data Subjects</b>	<p>The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects:</p> <p><b>DE&amp;S staff, Contractor's staff (including volunteers, agents, and temporary workers) customers / clients, suppliers</b></p>
<b>Categories of Data</b>	<p>The Personal Data to be processed under the Contract concern the following categories of data:</p> <p><b>Name, work address, work phone number, work email address</b></p>
<b>Special Categories of data (if appropriate)</b>	<p>The Personal Data to be processed under the Contract concern the following Special Categories of data:</p> <p><b>Not Applicable</b></p>
<b>Subject matter of the processing</b>	<p>The processing activities to be performed under the contract are as follows:</p> <p><b>Execution of the Contract</b></p>
<b>Nature and the purposes of the Processing</b>	<p>The Personal Data to be processed under the Contract will be processed as follows:</p> <p><b>The Contractor may use Personal Data to enable stakeholder management, including co-ordination of meetings and day-to-day correspondence related to execution of the Contract. This may consist of collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available of data, required for execution of the Contract.</b></p>

<b>Technical and organisational measures</b>	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract:</p> <p><b>(1) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and</b></p> <p><b>(2) regularly assessing and evaluating the effectiveness of such measures adopted by it</b></p>
<b>Instructions for disposal of Personal Data</b>	<p>The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract):</p> <p><b>The Personal Data shall be retained until the Contract is closed or terminated, or until the time at which the individual is no longer involved in the Contract. All Personal Data will be destroyed following closure or termination of the Contract.</b></p>
<b>Date from which Personal Data is to be processed</b>	<p>Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here:</p> <p><b>Contract Commencement</b></p>

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

## **Schedule 20 - GFE**

Hardware Items

**(Information Redacted)**

Software Items

**(Information Redacted)**

## **Schedule 21 - Security Aspects Letter (SAL)**

**(Information Redacted)**



## DEFFORM 111

### DEFFORM 111

#### Appendix - Addresses and Other Information

**1. Commercial Officer**

(Information Redacted)

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

(Information Redacted)

**3. Packaging Design Authority Organisation & point of contact:**

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



**4. (a) Supply / Support Management Branch or Order Manager:**

Branch/Name:



(b) U.I.N.

**5. Drawings/Specifications are available from**

**6. Intentionally Blank**

**7. Quality Assurance Representative:**

(Information Redacted)

8. **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].

**9. Consignment Instructions** The items are to be consigned as follows:

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:

(Information Redacted)

**11. The Invoice Paying Authority**

(Information Redacted)

**12. Forms and Documentation are available through \*:**

(Information Redacted)

**\* NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.kid.mod.uk/maincontent/business/commercial/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.