

Contract Terms and Conditions

Contract No:

LSBU15/0057

BABCOCK

**For Repair of Jackal & Coyote Blast
Mitigation Seats**

**Between Secretary of State for Defence of
the United Kingdom of Great Britain and
Northern Ireland**

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**And
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** Where the document refers to the Authority, this shall represent Babcock DSG who are acting as the Procurement Agent on behalf of the Authority*

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The Schedules that apply to this Contract are:

- Schedule 1.** Definitions of Contract
- Schedule 2.** Schedule of Requirement
 - Annex A to Schedule 2:** Pricing Table
- Schedule 3.** Contract Data Sheet
 - Annex A to Schedule 3:** DEFFORM 111
- Schedule 4.** Contract Change Process
- Schedule 5.** Statement of work for Repair/ Remanufacture
- Schedule 6.** Contractors Commercially Sensitive Information
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- Schedule 8.** Acceptance Procedure
- Schedule 9.** Hazardous Articles, Materials or Substances Supplied under the Contract
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- Schedule 15.** Contract Status Report
- Schedule 16.** Sample Contract Novation Agreement
- Schedule 17.** Deliverable Quality Plan

General Contract Provisions

A1. Interpretation

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

A2. Amendments to Contract

- a. All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of **Schedule 5 (Contract Change Process)** shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with **clause A2.a** above has been issued.

A3. Variations to Specification

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

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

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

A4. Precedence

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

A5. Severability

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

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

A6. Assignment of Contract

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

A7. Waiver

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

A8. Third Party Rights

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

A9. Governing Law

a. Subject to **clause A9.d**, the Contract shall be considered as a contract made in England and subject to English Law.

b. Subject to **clause A9.d and A21 (Dispute Resolution)** and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Subject to **clause A.9.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 clause A9 and for the enforcement of any judgment, order or award given under English jurisdiction.

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

(1) **Clause A9.a, A9.b and A9.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 **clause A21 (Dispute Resolution)** and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of 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 **clause A9** and for the enforcement of any judgment, order or award given under Scottish jurisdiction."

(2) **Clause A21.b** shall be amended to read:

"In the event that the dispute or claim is not resolved pursuant to **clause A21.a** the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this **clause A21.b** shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the 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 **clause A9** 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 this 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 its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

A10. Entire Agreement

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

A11. Disclosure of Information

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

(1) shall treat in confidence all Information it receives from the other;

(2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

(3) shall not use any of that Information otherwise than for the purpose of the Contract; and

(4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

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

(1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and

(2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

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

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

(1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

(2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or

(3) can show:

(a) that the Information was or has become published or publicly available

for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

(b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;

(c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or

(d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

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

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

f. The Authority may disclose the Information:

(1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

(2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in **Schedule 1** (including benchmarking organisations) for any purpose relating to or connected with this Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

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

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

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

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

A12. Publicity and Communications with the Media

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

A13. Protection of Personal Data

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

A14. Transparency

- a. Subject to **clause A14.b** but notwithstanding **clause A11**, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with **clause A14.a**, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at **Schedule 7 (Contractor's Commercially Sensitive Information)**.
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with **clause A14.b**. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this **clause A14** shall affect the Contractor's rights at law.

A15. Equality

- a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- b. Without prejudice to the generality of the obligation in **clause A15.a**, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent Legislation in the country where the Contract is being performed.
- c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this **clause A15** by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.
- d. The Contractor agrees to take reasonable efforts to reflect this **clause A15** in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this **clause A15** in their subcontracts that they enter into to satisfy the requirements of the Contract.

A16. Child Labour and Employment Law

- a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.

b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

A17. Subcontracting

a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.

b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.

c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:

(1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and

(2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.

d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience in the event that the Authority exercises its right to terminate this Contract under **clause A22 (Termination for Convenience)**, with twenty (20) Business Days' notice (or such other notice period as the Authority shall give under this Contract).

e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone : 01204 880733) or <http://business.base-uk.org/procurement>.

f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by **clause D1.a (Third Party Intellectual Property – Rights and Restrictions)**. On receipt of any such notification the Authority shall issue a written authorisation to the Subcontractor in accordance with **clause D1.g**. Any such authorisation shall always be subject to **clauses D1.j, D1.k and D1.n** as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in any such claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.

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

A18. Change of Control of Contractor

a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol BS34 8JH as soon as practicable of any intended, planned or actual change of Control. The

Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have.

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

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

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

A19. Termination for Insolvency or Corrupt Gifts

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

Insolvency:

a. where the Contractor is an individual:

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

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

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

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

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

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

- (a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;
- (b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;
- (c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or
- (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

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

b. where the Contractor is a firm:

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

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

(3) any event listed in **clause A19.a** occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor;

(4) any event listed in **clause A19.c** occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(5) an event listed in **clause A19.e** in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(6) any event listed in this **clause A19.b** occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;

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

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

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

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

- (a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
 - (b) it is unable to pay its debts in terms of section 221 of IA 86; or
 - (11) any analogous procedure or step is taken in any jurisdiction;
- c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:
- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under Schedule A1 of IA 86;
 - (2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;
 - (3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
 - (4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
 - (5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;
 - (6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or
 - (7) any analogous procedure or step is taken in any jurisdiction;
- d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

Corrupt Gifts

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

- (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;

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

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

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

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

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

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

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

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

A20. Consequences of Termination

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

A21. Dispute Resolution

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

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

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

A22. Termination for Convenience

a. The Authority shall have the right at any time to terminate the Contract in

whole or in part by giving the Contractor written Notice to expire at the end of the period specified in **Schedule 3 (Contract Data Sheet)** or if no such period is specified at the end of twenty (20) Business Days.

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

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

A23. Contractor's Records

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

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

Whichever occurs latest.

A24. Duration of Contract

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

A25. Contractor's Warranties

a. The Contractor warrants and represents, that:

- (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
- (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
- (3) from the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- (4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

B The Contractor Deliverables

R1. Supply of Contractor Deliverables and Quality Assurance

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
 - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables;
 - (2) comply with all applicable Legislation; and
 - (3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of **clause B1.b.** shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
 - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
 - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables

B2. Environmental Requirements

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

B3. Disruption

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

C Price

C1. Contract Price

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in **Schedule 3 (Contract Data Sheet)**.

b. Subject to **clause G2** the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

D Intellectual Property

D1. Third Party Intellectual Property – Rights and Restrictions

a) The Contractor shall promptly notify the Authority as soon as they become aware of:

(1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

(2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything Delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;

(3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

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

a) If the Information required under **clause D1.a** has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

b) For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This clause shall not apply if:

(1) the Authority has made or makes an admission of any sort relevant to such question;

(2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;

(3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

(4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in **clause D1.c** does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

g. If, under **clause D.1a**, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

(1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

(2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

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

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

Designs and Patents Act 1988 in respect of any intellectual property; or

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

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

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

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

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

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

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

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

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

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

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

n. The general authorisation and indemnity is:

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

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

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

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

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

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

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

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

E Facilities and Assets

E1. Access to Contractor's Premises

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

F Delivery

F1. Authority's Remedies for Breach of Contract

a. If the Contractor:

- (1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant date specified in Schedule of Requirements and / or the Specification;
- (2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;
- (3) supplies Contractor Deliverables that do not comply with **clause B1.b**;
- (4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with **clause A18**, or fails to supply or withholds the Information required under **clause A18.a**;
- (5) commits a persistent failure by failing to meet
 - (a) 1 or more KPIs on a rolling 3 month period,

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

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

supplier.

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

c. In the event that the Authority terminates the Contract in whole or in part pursuant to **clause F1.a.(6) or F1.b.** or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

d. This **clause F1** shall also apply to any remedial services carried out by the Contractor in accordance with **clause F1.a.(8)**.

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

G Payment and Receipts

G1. Payment – This payment clause (G1) does not apply – please see section L17 for further instructions/guidance.

G2. Value Added Tax

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the provision of any Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).

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

d. Where the provision of any Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables.

G3. Debt Factoring

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with **clause A6 (Assignment of Contract)**, the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the

Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ('the Act'). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this **clause G3** shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under **clause L17**;
- (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both **clauses G3.b and G3.c.(2)**.

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under **clause G3.a**, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c. The Contractor shall ensure that the Assignee:

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

d. The provisions of **clause L17 (Payment and Invoicing)** shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

H. Contract Administration

H1. Progress Monitoring, Meetings and Reports

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

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

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

H2. Authority Representatives

a. Any reference to the Authority in respect of:

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

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

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

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

H3. Notices

- a. A Notice served under the Contract shall be:
- (1) in writing in the English Language;
 - (2) authenticated by signature or such other method as may be agreed between the Parties;
 - (3) sent for the attention of the other Party's representative, and to the address set out in **Schedule 3 (Contract Data Sheet)**;
 - (4) marked with the number of the Contract; and
 - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in **Schedule 3 (Contract Data Sheet)**, by electronic mail.
- b. Notices shall be deemed to have been received:
- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
 - (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
 - (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

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

DEFCON 23 (SC3) (Edn 12/14) Special Jigs, Tooling and Test Equipment

DEFCON 127 (Edn 12/14) Price Fixing Condition For Contracts of Lesser Value

DEFCON 601 (SC) (Edn 03/15) Redundant Materiel

DEFCON 611 (SC3) (Edn 02/16) Issued Property

DEFCON 624 (SC) (Edn 03/15) Use of Asbestos

DEFCON 630 (SC) (Edn 03/15) Framework Agreements

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

DEFCON 653 (Edn 12/14) Pricing on Ascertained Costs

DEFCON 694 (SC3) (Edn 03/16) Accounting for Property of the Authority

K. Special Conditions of Contract that apply to this Contract are:

K1. 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 3 (Contract Data Sheet) Schedule 2 (Schedule of Requirements for Associated Goods)** 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. The Contractor shall consider the CofC to be a record in accordance with **clause A23 (Contractor's Records)**.

c. 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 for Associated Goods)**;
- (8) Description of Contractor Deliverable, including part number, Specification and configuration status;
- (9) Identification marks, batch and serial numbers in accordance with the Specification;
- (10) Quantities;
- (11) 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.

K2. Marking of Contractor Deliverables

a. The Contractor shall ensure that each Contractor Deliverable is marked clearly and indelibly:

- (1) in accordance with the requirements specified in **Schedule 3 (Contract Data Sheet)**, or if no such requirement is specified, with the MOD stock reference number, NATO Stock Number (NSN) or alternative reference number specified in **Schedule 2, (Schedule of Requirements for Associated Goods)**;
- (2) where the Contractor Deliverable has a limited shelf life, the marking shall include: the expiry date/date of manufacture, expressed as specified in **Schedule 3 (Contract Data Sheet)**, or in the absence of such requirement, they shall be marked as month (letters) and year (last two figures); and
- (3) ensure that any marking method used does not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

b. Where it is not possible to mark a Deliverable with the required particulars, these should be included on the package in which the Deliverable is packed, in accordance with **clause K9**.

K3. Supply of Hazardous Material or Substance in Contractor Deliverables

This Clause does not apply in this instance.

K4. Timber and Wood-Derived Products

This Clause does not apply in this instance.

K5. Rejection

- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this 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 a. shall take place by the time limit for rejection specified in **Schedule 3 (Contract Data Sheet)**, or if no such period is specified within 20 (twenty) Business Days.

K6. 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, A Delivery Note (as specified in **Schedule 3 - Contract Data Sheet**).
 - (4) be responsible for all costs of Delivery; and
 - (5) Deliver the Contractor Deliverables to the Consignee as stated in **Table 2 of Schedule 2, (Schedule of Requirements for Associated Goods)** 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 DEFFORM 111 at **Schedule 4 (DEFFORM 111)** 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 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
 - (4) 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 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 c.**

K7. Self to Self Delivery

This Clause does not apply in this instance.

K8. Acceptance

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure. If no acceptance procedure is so specified acceptance shall occur when either

(1) the Authority does 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 K5.b** has elapsed.

K9. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

a. The Contractor shall pack or have packed the Contractor Deliverables:

(1) in accordance with any requirements specified in **Schedule 2, (Schedule of Requirements for Associated Goods)** (which if represented by packing codes shall be interpreted by reference to DEFFORM 96 and DEF STAN 81-41 (Part 1));

(2) to ensure that each Deliverable may be transported in an undamaged and serviceable condition.

b. The Contractor shall ensure that each package containing the Contractor Deliverables is labelled to include:

(1) the name and address of the Consignor and Consignee as in **Table 2 of Schedule 2 (Schedule of Requirements for Associated Goods)** including:

(a) the Delivery destination/address if not of the Consignee;

(b) the transit destination/address (for aggregation/disaggregation, onward shipment etc.);

(2) the description and quantity of the Contractor Deliverables enclosed;

(3) the full 13 digit NATO Stock Number (NSN) where the UK is registered as a user of it, or, where the requirement does not have an NSN, with the alternative reference number specified in **Schedule 2, (Schedule of Requirements for Associated Goods)**;

(4) the makers part, catalogue, serial or batch number as appropriate;

(5) the Contract number (call off order numbers if enabling or as appropriate);

(6) any statutory Hazard markings and any handling markings, including the mass of any package which exceeds 3kg;

(7) the Packaging level (Military J, N or P, special H, Commercial A etc.) as specified in **Schedule 2, (Schedule of Requirements for Associated Goods)**;

(8) where applicable, any particulars which cannot be marked on each Contractor Deliverable in accordance with **clause K2.b**;

(9) any additional markings specified in **Schedule 2, (Schedule of Requirements for Associated Goods)**;

- (10) the Primary Packaged Quantity (PPQ) (if Trade Packaging); and
- (11) if Trade Packaging to be marked in blue "TRADE PACKAGE" or if Export Trade Packaging to be marked in black "EXPORT TRADE PACKAGING".

Where UK Military or NATO Packaging is required, labelling of the Contractor Deliverables shall be in accordance with DEF STAN 81-41 (Part 6) and **clause b**.

c. Bar code markings shall be applied to the external surface of each package and to each PPQ package within. The minimum information shall include; the full 13 digit NSN, Denomination of Quantity (D of Q) see DEFFORM 96, actual quantity in package, Serial Number and/or batch number, if applicable. The bar code symbology used shall meet the requirements of STANAG 4329. Code 39 shall be the default symbology for the Packaging marking application. Requirements for positioning bar codes are defined in DEF STAN 81-41 (Part 6).

d. Where the Contractor Deliverables are, or contain Dangerous Goods within the meaning of the regulations set out in **clauses K4.a and K4.b**, the Packaging level is always Trade or Export Trade Packaging not Military Level as noted in DEF STAN 81-41 (All Parts).

e. Where UK Military or NATO Packaging is required, the Contractor shall meet the requirements as specified in **Schedule 2, (Schedule of Requirements for Associated Goods)**. The Contractor Deliverables shall be contained in packages which comply with the requirements of DEF STAN 81-41 (parts 1, 2 and 5) and be capable of meeting the appropriate test requirements of DEF STAN 81-41 (part 3).

f. Where there is requirement to design UK Military or NATO level Packaging, the work shall be undertaken by a company which is registered and certified to Military Packaging Accreditation Scheme (MPAS), (ISO 9001 based), or which is able to demonstrate that its quality systems and Military package design expertise are of an equivalent standard. Military Level Packages shall be designed to comply with the relevant requirements of DEF STAN 81-41; testing to DEF STAN 81-41 (Part 3) or DEF STAN 00-35. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-41 (Part 4).

g. New designs shall not be made where there is an existing SPIS or one that may be easily modified to be in accordance with the contract requirements, (see **clause f.**). Application should be made to the Project Team (PT) or other access point for a search to establish the SPIS status using DEFFORM 129a (Application for Packaging Designs and Authorisation for Package Design Work); media format as per clause j.

h. Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design.

i. SPIS designs are maintained on a central Master Packaging Database (MPD), the SPIS Index (SPIN), held on the MOD design repository or other authorised secure servers, for monitoring by the MOD and review by MPAS certified contractors and the MOD.

j. All SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format which shall be Adobe "PDF" compatible with Adobe Acrobat version 5. Any other format shall be agreed between the Packaging Design Authority (PDA) and MOD and must be compatible with access to SPIN.

k. Production of Military Level Packaging; where it is necessary to use a SPIS design the Packaging manufacturer should also be a registered contractor as stated in **clause g**. The manufacturer is responsible for confirming that the design is suitable.

l. Minor alterations/updates and similar to existing designs may be carried out by MPAS Certificated designers, all major/significant changes and new designs need to be authorised by the Authority's Representative (Project Manager) (unless that power is delegated to a Prime or MPAS Registered company).

m. Intellectual Property Rights (IPR); the MOD shall retain the rights to the SPIS designs or to copy or use any information relating to them, if otherwise specified.

n. Where applicable one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor is the PDA, they shall:

(a) on receipt of instructions received from the Authority's Representative, (Project Manager), prepare the required package design in accordance with DEF STAN 81- 41;

(b) where the Contractor is certified they shall, on completion of any design work, provide the Authority's Representative (Project Manager) 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 certified organisation, they shall obtain approval for their design from a certified organisation before proceeding, then continue with **sub-clause n.(1)(b)** of this condition.

(2) Where the Packaging contractor is not the PDA and is un-certified, they shall not produce, modify, or update etc SPIS Designs. They shall obtain current SPIS design(s) from SPIN or a certified organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they shall apply for SPIS information as soon as practicable after receipt of Contract or order.

(3) Where the Contractor is un-certified and has been given authority to produce, modify, and update SPIS Designs by contract, they shall obtain approval for their design from a certified organisation before proceeding, then continue with **sub-clause n (1)(b)** of this condition.

(4) Where the Contractor is not a PDA but is certified; follow **sub-clauses n (1) (a) and (b)** of this condition.

The Contractor shall note that all documents supplied as SPIS designs shall be considered as Contract Data Requirement.

o. The Contractor shall comply with the requirements for the design of Military Packaging as follows:

(1) Where there is a requirement to design UK Military or NATO Level Packaging, the work shall be undertaken by a certified organisation, or one that although non-certified is able to demonstrate that its Quality Systems and Military Package Design expertise are of an equivalent standard.

The certification scheme (MPAS) detail is available from:

DES IMOC SCP Packaging
MOD Abbey Wood
Bristol, BS34 8JH
Tel. +44(0)30679-35353

DESIMOCSCP-Pkg@mod.uk

(2) Military Level packages shall be designed to comply with the relevant requirements of DEF STAN 81-41, testing to DEF STAN 81-41 (Part 3) or DEF STAN 00-35. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-41 (Part 4);

(3) all Packaging contractors on receipt of a requirement shall search SPIN or apply for a search of SPIN to establish the SPIS status (using DEFFORM 129a 'Application for Packaging Designs or their Status', media format as per **clause g.**);

(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 Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated in this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information as with SPIS, see **clause f.**;

(6) all SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format;

(7) the default electronic media format of a SPIS shall be Adobe "PDF" compatible with SPIN requirements;

(8) manufacture of Military Level Packaging; where it is necessary to use a SPIS design then the packaging manufacturer should also be a certified contractor as per clause a. The Packaging manufacturer is responsible for confirming that the design is suitable.

p. The Authority shall retain all Intellectual Property Rights (IPR) relating to the designs unless otherwise agreed in writing.

q. If special jigs, tooling etc., are required for the production of Military Packaging, the Contractor shall obtain written approval from the Authority's Representative (Commercial) before providing them.

K10. Overseas Expenditure

This Clause does not apply in this instance.

K11. Import Licence

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

K12. Export Licence

a. The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Contractor Deliverable (including Information and software) to be delivered under the Contract is or will be subject to:

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

that imposes or will impose end use, end user, re-transfer, 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 **clause D1.**

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

- (1) the exporting nation, including the export licence number (where known);
- (2) the Contractor Deliverables (including Information and software) affected;
- (3) the nature of the restriction and obligation;

- (4) the authorised end use and end users;
- (5) any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Contractor Deliverables or to anything Delivered or used in the performance or fulfilment of the Contractor Deliverables; and
- (6) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Contractor Deliverables or of anything Delivered or used in the performance or fulfilment of the Contractor Deliverables.

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

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

(1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable to be Delivered under the Contract, the Contractor, unless otherwise agreed with the Authority, identifies in the licence 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;

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

d. If the Information required under **clauses a. and b.** has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of **clauses a. and b.**

e. If the Contractor becomes aware of any changes in the Information notified previously under **clauses a., b. or d.** that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Contractor shall notify the Authority promptly of the change.

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

g. Where the Contract performance requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit an Export Licence Plan for agreement with the Authority.

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

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

(2) the Authority shall provide sufficient Information, certification and other documentation necessary to support the application for the requested variation; and

(3) the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

i. Where the Authority provides materiel (Information and items, including software) to enable the Contractor to perform the Contract, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in the provisions of **clause a.**:

(1) the Authority may, or at the request of the Contractor, undertake to give the Contractor a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Contractor's ability to perform the Contract, including, to the extent applicable, to the Contractor's performance of the Contract:

- (a) the exporting nation, including the export licence number (where known);
- (b) the items or Information affected;
- (c) the nature of the restriction and obligation;
- (d) the authorised end use and end users;
- (e) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
- (f) any specific restrictions on re-transfer or re-export to third parties of the items or Information affected.

(2) this will not include Intellectual Property specific restrictions of the type mentioned in **clause D1 (Third Party Intellectual Property – Rights and Restrictions)** in relation to the Authority instead of the Contractor;

(3) the Contractor and its Subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the Authority;

(4) the Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under **clause j.**

j. Where restrictions are advised by the Authority to the Contractor under **clause i.**, the Authority and the Contractor shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a change to the Specification and handled under the terms of **clause A3 (Variations to Specification)** and the Contract Price or Delivery schedule or both shall be adjusted as appropriate. If the Contractor is unable to perform the Contract as a result of these restrictions then the Authority shall consult with the Contractor on alternative solutions requiring amendment of the Contract under **clause A2 (Amendments to Contract)** and **A3 (Variations to Specification)** and may terminate the Contract if no alternative solution satisfies the essential terms of the Contract. Termination under these circumstances will be under the terms of **clause A22 (Termination for Convenience).**

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

K13. Key Performance Indicators and Performance Management

The Contractor's performance of the Contract shall be monitored and measured using the agreed Key Performance indicators (KPIs) within Section **L14** of this Contract.

K14. 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. Where necessary the Authority may issue (or having issued, cancel) a Diversion Order for urgent Delivery of the Contractor Deliverables identified in it:
- (1) where a Diversion Order is issued the Contractor Deliverables are to be Delivered by the quickest means available, unless otherwise directed;
 - (2) a Diversion Order which is beyond the scope of the Contract is to be returned immediately to the Authority's Representative (Commercial) with an appropriate explanation;
 - (3) if the terms of the Diversion Order are unclear, the Contractor shall contact the Authority's Representative who issued it immediately for clarification or further instruction, copying the Authority's Representative (Commercial) in on all correspondence;
 - (4) the Contractor shall be entitled to any additional Delivery and Packaging costs generated in complying with the Diversion Order or cancellation thereof, claims for which are to be submitted by the Contractor to the Authority's Representative (Commercial) together with appropriate receipts and shall be priced and agreed in writing as a amendment to the Contract in accordance with **clause A2**. The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and Packaging costs

K15. Copyright

- a. This Condition shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, except that it shall not apply to copyright works consisting of technical data and software where such rights are granted elsewhere in the Contract.
- b. The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.
- c. The Contractor agrees not to publish any copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.
- d. The Authority shall have, in respect of any copyright work to which this Condition applies, a free licence:
- (1) to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to **clauses b., c. or d.** of this condition, be made available to any third party;
 - (2) to issue the work or any part of the work or any copy of the work or any part thereof to any contractor or agent for the purpose of use only in connection with a contract for the United Kingdom Government for the study, management, evaluation, and/or assessment of the work, provided that any such contractor or agent shall be placed under an obligation which restricts disclosure and use of such work to the said purpose;
 - (3) to issue the work or any part of the work or any copy of the work or any part thereof to the government of a nation who is a member of the EU or NATO or bodies forming part of said groupings, to the Governments of Australia, New Zealand and Japan or such other government(s) of nation(s) prescribed in the

Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;

(4) to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes.

Provided that, subject to any pre-existing rights of the Authority, **clauses c. and d.** shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract. **Clauses c. and d.** shall apply to all works or part thereof unless otherwise marked by the Contractor in accordance with **clause f.** below.

e. As soon as it becomes aware that any copyright work or part thereof Delivered or proposed to be Delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall inform the Authority and upon Delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.

f. The Contractor may mark or include in any copyright work to which this Condition applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.

g. This Condition shall constitute an "agreement to the contrary" for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.

h. In this Condition "copyright work" shall be understood to include any works, data or other materials in which a database right subsists.

The Authority reserves to itself the right at its sole discretion to appoint an agent to manage this Contract, and to give directions to the Contractor, on its behalf. In the event of such an appointment, the Authority will notify the Contractor of the identity of the agent and of the scope of the agent's authority to so act.

K16. Limitation of Contractor's Liability

This Clause does not apply in this instance.

K17. Contract Novation

a) The Authority and Babcock DSG Limited (Company Number 09329025) (**Babcock**) entered into a Land Equipment Service Provision and Transformation Contract dated 31 March 2015 (the **SPC**) in respect of which certain services transfer, on a phased basis, from the Authority to Babcock.

b) The Contractor acknowledges and agrees that the Authority (in its sole discretion) may transfer its rights and obligations under this Contract to Babcock as part of the transfer of services under the SPC.

c) Following the receipt of a written notice by the Authority to the Contractor, the Contractor shall enter into the novation agreement set out at Schedule 16 (the **Novation Agreement**).

d) Notwithstanding Clause 1.1 above, the Contractor further agrees at the request of the Authority to enter into any further agreement or document and take any formal steps which are necessary or desirable at the time to give effect to these provisions and/or the Novation Agreement.

e) The Contractor shall disclose to Babcock such Confidential Information as may be required for the operation of the Contract. Where third-party consent is required before such Confidential Information can be disclosed, the Contractor shall use all reasonable endeavours to obtain such consent.

L. The processes that apply to this Contract are:

L1. Scope Of Contract

The Contract shall be for the Repair of Jackal & Coyote Blast Mitigation Seats on an as required basis to the latest OEM Specification in accordance with the Repair Specification at Schedule 5 to the Contract.

L2. Authority For Work

A Purchase Order will be sent to the Company at the same time as Contractor Deliverables are fed in for repair/remanufacture. The Authority shall not be liable, in any way, for work undertaken by the Contractor without receipt of this Purchase Order (a sample of which is at Schedule 11) each of which shall bear a unique order number and Job No. e.g. 2RP/17***** (DIIN).

The Purchase order will be electronically sent to:

Alexandra.cottier@jankel.com

Following receipt of the Purchase Order and Contractor Deliverables for repair/remanufacture the Contractor is to compile a detailed Survey Report (a sample of which is at Schedule 9) of the Contractor Deliverables to establish their overall condition. Where standard repair/remanufacture prices fall within the agreed firm pricing as detailed on Schedule 2 of the Contract, the Contractor is to proceed with the repairs.

Where the standard repair/remanufacture prices have not been agreed within the Contract or if the repair/remanufacture will deviate from the standard price, the Contractor is required to submit the Survey Report to the Repair Manager fully identifying the requirement for all work relating to the equipment including costs within 30 business days (unless otherwise agreed) of receipt of the Contractor's Deliverable.

No rebuild work is to be undertaken by the Contractor until the Survey Report and the associated costs have been sanctioned by the Repair Manager as 'fair and reasonable' and Authority is given to proceed.

L3. Quality/Specification

All Articles and/or Services under the Contract shall be supplied/maintained in accordance with the Part Number, Long Item Description, current agreed Equipment Build Standard, and the Statement of Work detailed at **Schedule 5**.

In addition, the Contractor shall ensure that Articles and/or Services are in accordance with the following quality requirements:

- AQAP 2120 Edition 3 NATO Quality Assurance Requirements for Production

- AQAP 2009 Edition 3 Application and Interpretation
- DEFSTAN 05-57 Configuration Management
- DEFSTAN 05-99 Government Furnished Equipment
- DEFSTAN 05-92 Quality Systems in Industry
- DEFSTAN 05-61 Part 1- Issue 5, Part 4- Issue 3 and Part 9- Issue 4
(Deviation/Production Permits, Waivers concessions and QA of Sub Contractor Work)
- DEFSTAN 00-56 Safety Management Requirements for Defence Material
- DEFSTAN 05-135 Avoidance of Counterfeit Material
- DEFSTAN 81-41 Packaging of Defence Material

SAFETY CRITICAL - Safety critical items shall be subject to independent inspection in accordance with DEFSTAN 05-61 part 9, issue 4- quality assurance procedural requirements.

For the purposes of this Contract, and all references pertaining to, the Quality Assurance Representative (QAR) is:

Babcock Repair Manager
 Building B15
 MOD Donnington
 Telford
 Shropshire
 TF2 8JT

FAO: Stephen Nicholson

Tel: 01952 673989

Email: stephen.nicholson@babcockinternational.com

The Contractor shall immediately inform the Authority of any changes to their Quality Registration/ISO Accreditation, or the scope of activity of the same, that occur during the Contract Period (See L14 – Key Performance Indicators).

L4. Duration

The Contract shall have a duration of 36 months from the date of the signed DEFFORM 10 by the Contractors delegated signatory and shall cover all activity detailed on the Schedule of Requirements (**Schedule 2**) as required.

After the Contract expires, only instructions relating to existing requirements and covering reduction, cancellation, changes of part numbers and similar alterations shall be issued. Orders covering new requirements or increases to existing requirements will not be issued or accepted after the expiration date.

L5. Responsibility of the Contractor

1. The Contractor shall be entirely responsible for undertaking the work under the Contract as defined in the Contract Schedule of Requirements (**Schedule 2**).
2. The Contractor shall be responsible for achieving proper completion of the Contract in accordance with its terms and shall be responsible for;

- Planning, programming and progressing of the work, within its control, to the satisfaction of the Authority. This includes sub-contracts and appropriate documentation.
 - Financial Management of the work, including financial control and monitoring of any sub-contracts;
 - Providing the Authority with the information, on a continuing basis, so as to reasonably assure that work is proceeding to time, cost and performance.
3. If the Contractor fails to complete any part of the work, or supply any of the Articles, as required by this Contract, or to meet any of the acceptance criteria (at **K8**), and such failure is not caused by undue delays by the Authority, it shall be the responsibility of the Contractor to rectify that failure to the reasonable satisfaction of the Authority at no additional cost.
 4. The Authority reserves the right to refuse payment for alterations or changes made outside of the scope of the Contract which have not been made in accordance with **A2 – Amendments**, or the provisions of **Schedule 4 – Contract Change Process** (as also detailed in **A2**).
 5. The Authority will not be bound to accept or pay for any Articles other than those authorised in accordance with the Contract. If the Contractor considers that any requirements made by the Authority are NOT in accordance with the terms of the Contract, they shall seek the agreement of the Authority's Representative as to the extent of the application of the requirements to that particular order. (See **H2** for definition of the Authority's Representative.)
 6. **Point of Contact for this Contract is:**
Alexandra Cottier - Alexandra.cottier@jankel.com
 7. The Contractor shall be responsible for notifying the Authority of any change to the Point of Contact details.
 8. The Contractor is entirely responsible for the security of all MOD property in his possession for the purpose of the Contract in accordance with DEFCON 611 and DEFCON 694.

L6. Pricing

Prices for Repair of Articles shall be as listed at **Annex A to Schedule 2** and in accordance with **L2 – Authority for Work**.

Unlisted Articles:

Where there is a requirement for a new Article that is not listed on **Schedule 2**, this shall be passed to the Authority's Representative's Procurement Branch. They will request a quotation from and agree pricing with the Contractor for the new Article. The Contractor's quoted price shall remain valid and open for acceptance for 30 days.

Any prices for new Articles are to be provided within the following timescales:

95% - within 10 working days
100% within 30 working days

(Refer to **L14 – Key Performance Indicators**)

Any subsequent price agreements shall be added to the agreed Annexes by formal amendment (as per **A2**) to the Contract and shall be valid up to and including the final day of the current pricing year.

The Contractor will be required to complete and return the accompanying DEFFORM 10B, to a formal amendment for the Contract Amendment within 10 working days to the issuer.

No Article can be added to the Contract unless this process is adhered to, and failure to do so may result in non-payment of work.

L7. Open Book Accounting

The Authority reserves the right to verify the prices paid by the Contractor for spare parts claimed under this Contract. To enable this, the Contractor shall make the facility available to check prices actually paid to third parties, for the purposes of this Contract, at all reasonable times and subject to prior notice and at no cost to the Authority,

L8. Notification of discontinuation of products

The Contractor shall inform the Authority, within 3 working days, of any possible difficulty in maintaining the future support of any of the Articles covered within the scope of the Contract. (as per **L14 – Key Performance Indicators**).

The Contractor shall inform the Authority, within 3 working days, if they intend to cease production completely of any Article covered by the Contract (as per **L14 – Key Performance Indicators**)

L9. Deficiencies And Damage In Articles Issued For Remanufacture

For Repair of Jackal & Coyote Mitigation Seats issued for repair are to be checked on receipt for damage and correct nomenclature. Where there appears to be transit damage or deficiencies e.g. major components missing, or incorrect equipment, the Contractor shall, in the first instance, contact the Repair Manager who will decide on an appropriate course of action.

Following confirmation from the Repair Manager on the appropriate course of the action, the Contractor is to complete MOD Form 445 (Discrepancy Report - Schedule 12) which should then be sent to:

- (1) One Copy to MAC Branch Donnington DESLCSLS-LogMACDRTeam@mod.uk
- (2) One Copy to the Babcock DSG Repair Manager

L10. Contractor Deliverables Considered Beyond Economical Repair

When the Contractor considers the Contractor Deliverables to be Beyond Economical Repair (BER) he shall immediately advise the Repair Manager (as identified in box 2 of DEFFORM 111) of his findings on an Application for Disposal of BER Form P2, a sample of which is at **Schedule 14**. BER is defined as when the remanufacturing cost exceeds 80% of the replacement cost of the Contractor Deliverable. If approved, the Repair Manager shall issue an Army Form G1043 (AF G1043) which shall detail the disposal instructions.

All Contractor Deliverables subject to BER investigation shall be placed in quarantine by the Contractor and retained as such until further instructions are given by the Repair Manager. The Authority reserves the right to inspect/audit BER stock holdings at the Contractors premises at any time throughout the duration of the Contract.

No work shall be carried out on any Contractor Deliverable which, after superficial examination, is considered to be BER.

Where the Repair Manager considers that a Contractor Deliverable is BER, the Contractor may be instructed to dismantle the Contractor Deliverable if serviceable or repairable parts can be recovered and such action is economical. Details of any parts recovered are to be brought on charge in the Contractor's Embodiment Loan account where repairable parts are to be segregated and accounted for separately.

Serviceable and repairable parts recovered shall be used as far as possible in the repair/remanufacture of other Contractor Deliverables issued under the Contract, subject to the prior approval of the Procurement Branch to a fair and reasonable price being agreed for the Contractor's purchase of such parts.

In the event that a Contractor Deliverable is considered BER and the Babcock DSG Repair Manager's decision is to proceed with remanufacture/repair, the Contractor shall be paid a 'fair and reasonable' price agreed in accordance with DEFCON 127 for all work properly undertaken.

L11. Warranty

The Contractor shall provide a warranty, which should be no less than 12 (twelve) months on any Repair work and from the date of fitting to the vehicle and/or equipment.

If, within 12 (twelve) months of the repair/remanufacture date, upon which a repaired/remanufactured Contractor Deliverable is deployed into service, it fails, develops any defect or is otherwise found to be unsatisfactory other than as a result of an act or omission of the Authority under this Contract, the cost of rectification, including all transport costs shall be borne by the Contractor.

Under no circumstances shall the Contractor or any Sub-Contractor's proceed with repair/remanufacture or any other action which would invalidate the current warranty of the equipment. If any such equipment is received which the Contractor recognises as being under warranty, the Contractor should inform the Authority immediately.

L12. Turnaround Times

All Contractor Deliverables shall be repaired within the agreed turnaround time detailed at Annex A to Schedule 2 of this Contract. This is a figure in weeks, which is the time from when a Contractor Deliverable and a Purchase Order (**Schedule 11**) is received at the Contractor's premises to when the Contractor Deliverables are packaged and LEIDOS Donnington has confirmed a delivery slot.

If the Contractor is unable to undertake the required task within the turnaround time, the Contractor must notify the Authority within one week of receipt of the Contractor Deliverable with detailed reasons why the Contractor is unable to meet the turnaround time. The Authority shall have absolute discretion to extend the turnaround time.

If the Authority agrees to extend the turnaround time they shall notify the Contractor of the varied turnaround time by updating the Contract Status Report as soon as possible. The varied turnaround time shall be no longer than 25% of the original turnaround time.

For the purposes of this Contract, 'business days' shall refer to Monday – Friday, excluding all Weekends, Bank Holidays and the seven (7) day period encompassing Christmas Day and New Year's Day (25th Dec and 1st Jan respectively).

The Contractor shall monitor performance of each repair against the turnaround time and shall provide a Contract Status Report in accordance with Clause H1 and Schedule 3 to the Contract. This information is to be detailed on a monthly basis in accordance with the Contract Status Report at Schedule 15 of the Contract. The report shall be sent to the Authority's Procurement Manager and Repair Manager as identified at Box 1 and 2 of the DEFFORM 111.

L13. Remedies In The Event Of Failure To Achieve Repair Turnaround Times

It is recognised by both parties that should delivery of Contractor Deliverables detailed at Schedule 2 repaired under the Contract be delayed beyond the agreed Repair turnaround time, the Authority will suffer loss and damage thereby.

Achievement of Repair turnaround time will be measured in accordance with the Key Performance Indicators at Clause L14.

In the event that a rebate becomes payable by the Contractor to the Authority, payments will be adjusted upon submission of invoice

Schedule 2	<u>In the event of failure to meet a contracted turn round time</u>	<u>Reduction in Repair cost per Contractor Deliverable (%)</u>
	Up to 30 days exceeded	2.5%
	31-60 days exceeded	5%
	60+ days exceeded	7%

L14. Key Performance Indicators and Performance Management

The Contractor's performance of the Contract shall be monitored and measured using the agreed Key Performance indicators (KPIs) (below)

Key Performance Indicators

KPI Area	Target	Responsibility	Review Dates
Delivery Performance	100% of Articles repaired and delivered within the timescales agreed in the Delivery Plan	Contractor	At quarterly intervals commencing 3 months from contract start date.
	Report by exception reasons for delivery plan timescale failure and advise what actions have been put in place to prevent reoccurrence.	Contractor	At monthly intervals commencing 1 month from contract start date
Warranty Repairs	100% of repaired Articles shall not require rectification under warranty within 3 months of repair	Contractor	At quarterly intervals commencing 3 months from first repaired article.
Progress of Articles	100% of Contract Status Report submissions to the authority by the 23 rd day of each month As specified in Schedule 3 – Contract Data Sheet.	Contractor	At monthly intervals commencing 1 month from contract start date

Contract Amendments	The Contractor shall complete and return the DEFFORM 10B to the Procurement Branch within 10 Business Days.	Contractor	As required
Certificate of Conformity	Certificates of Conformity shall be made available to the Authority within 10 business days when requested.	Contractor	As required
Minutes of meetings	The Contractor will provide 100% minutes of meetings within 5 business days of the Local Equipment/Commercial Review Meetings to the authority	Contractor	At quarterly intervals commencing 3 months from contract start
Quality Registration	Advise immediately of any changes to Quality Registration / ISO Accreditation, or the Scope of Activity of the Quality Registration / ISO Accreditation	Contractor	At quarterly intervals commencing 3 months from contract start date
Unlisted Articles	Shall provide prices for unlisted articles within the agreed timescales	Contractor	At quarterly intervals commencing 3 months from contract start date
Unlisted Articles	Shall complete and return the DEFFORM 10B, where appropriate, to the procurement Branch within 10 working days	Contractor	At quarterly intervals commencing 3 months from contract start date
Notification Of The Discontinuation Of Products	Shall advise the Authority at the earliest opportunity (within 3 working days) of any possible difficulty maintaining future supplies of Articles or the intention to cease production completely of Articles	Contractor-	At quarterly intervals commencing 3 months from contract start date

L15. Delivery Instructions

All Contract Deliverables shall be shipped in accordance with the requirements stated in the Contract (K6 and Schedule 3) and shall be accompanied by one delivery note per order / delivery. In addition, the delivery note shall be clearly marked with the following information in a human readable Barcode 39 font:

Order Number

NSN

PR Number (where applicable)

Qty

The delivery note shall make no reference to Terms and Conditions other than those stated in the Contract

L16. Non-Conforming Deliveries

The Contractor is advised that it is now Leidos policy to quarantine and reject any consignments that do not conform to the requirements of the Contract. Should any consignments be deemed as non-conforming by LS, the Authority shall notify the Contractor as to the reason(s) for non-conformance.

In accordance with Clause K5b - Rejection, it shall be the responsibility of the Contractor to rectify the problem on site at Leidos or arrange for the items to be collected and rectified at the contractor's premises at no cost to the Crown.

The list attached details the reasons upon which a consignment may be rejected. It is advised however that in certain circumstances the Authority may consider it impractical for the Contractor to undertake any rectification due to geographical location, nature of the non-conformance and/or urgency of need, in these situations the Authority may request Leidos to undertake the rectification action but will pass on any associated costs to the Contractor as necessary.

Reasons for Non Conformance

Incorrect DMC/NSN
Incorrect Description
Part/Batch Nos Incorrect
Incorrect PPQ
Incorrect D of Q
Packaging Level incorrect
No Bar Code Labelling
Insufficient/No Test Certificates
Damaged in Transit
Incorrectly Labelled
Incorrect Matcon
No Logo (ISPM 15) Fail
Mixed NSN
Non Codified Item
No Engineering Record Card
No Labelling
No Paperwork
No weight Label
Inadequate Shelf Life / Date of Manufacture (DOM)

L17. Payment and Invoicing Procedure

a. The Contractor shall raise a commercial invoice per purchase order, except in the event that part delivery has been expressly permitted by the Authority when a commercial invoice shall be raised per delivery.

b. Each commercial invoice shall be in the name of Babcock DSG Limited (acting as agent for the Authority) and must include:

(i) Contractor's name and contact details and registered number and registered address

- (ii) VAT registration number
- (iii) Date & Tax point date
- (iv) Invoice Number
- (v) Purchase order number
- (vi) Description of the Goods and/or Services; and
- (vii) Net and Gross VAT values
- (viii) all supporting documentation required under these Conditions and as reasonably requested by the Authority,

and submit via Email to: I&RM-accountspayable@babcockinternational.com

The Authority is entitled to reject invoices which do not conform to these requirements.

c. The Authority (acting through its agent, Babcock DSG Limited) shall pay all valid and undisputed claims for payment submitted by the Contractor in accordance with clause L17.b on or before the day which is thirty (30) days after the later of:

- (i) the day upon which a valid request for payment is received by the Authority; and
- (ii) the date of completion of the part of the Contract to which the request for approval of payment relates.

d. 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 this Contract.

e. 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.

L18. Surge

The Contractor shall have a surge capability to cope with times of tension, Transition to War (TTW), other operational needs and war.

The Authority will provide the Contractor with as much notice of surge requirements as possible. However, in particular circumstances, the notice period could be as little as 7 days. The Contractor shall maintain plans to meet future surge requirements.

Schedule 1 - Definitions of Contract

Core Definitions

AG173	means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;
AG210	means the MOD invoice form AG210 that suppliers submit as an invoice to enable a stage or milestone payment to be processed;
Assets	means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;
Authority	means the Secretary of State for Defence acting on behalf of the Crown;
Authority's Representative(s)	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b ;
Business Day	means any day excluding: <ol style="list-style-type: none">Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; andsuch periods of holiday closure of the Contractor's premises of which the Authority is given written Notice by the Contractor at least ten (10) Business Days in advance;
Central Government Body	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ol style="list-style-type: none">Government Department;Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);Non-Ministerial Department; or Executive Agency.
Child Labour Legislation	means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
Conditions	means the terms and conditions set out in this document;
Consignee	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be supplied;
Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with clause A2 (Amendments) ;
Contract Implementation Date	means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required;
Contract Price	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full

	and proper performance by the Contractor of its obligations under the Contract;
Contractor	means the person who, by the Contract, undertakes to provide the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
Contractor's Personnel	means all employees of the Contractor and Sub-Contractors to the Contractor who are assigned to the Contract. The Contractor shall bear full responsibility for the actions of these personnel for the duration of the Contract.
Contractor Commercially Sensitive Information	means the Information listed in the completed Schedule 6 - Contractor's Commercially Sensitive Information Form , which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
Contractor Deliverables	means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification;
Contractor's Representative	means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract;
Contractor's Team	means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract;
Control	means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person: <ul style="list-style-type: none"> a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor; and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;
Crown Use	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
DEFFORM	means the MOD DEFFORM series which can be found at https://www.gov.uk/acquisition-operating-framework ;
DEF STAN	means Defence Standards which can be accessed at https://www.dstan.mod.uk/
Deliver	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with Contract Condition "Delivery / Collection" and Delivered and Delivery shall be construed accordingly;
Delivery Date	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;

Design Right(s)	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
Diversion Order	means a set of procedures for urgent delivery of specified quantities of goods that are to be supplied under Contract to consignees other than those stated in the Contract.
Effective Date of Contract	means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;
Firm Price	means a price (Excl. VAT) which is not subject to variation;
Full Service Provision	means the provision by the Contractor of all of the Contractor Deliverables in accordance with the Conditions of this Contract;
Information	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract;
Key Performance Indicators	means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management" ;
Legislation	means in relation to the United Kingdom: <ul style="list-style-type: none"> a. any Act of Parliament; b. any subordinate Legislation within the meaning of section 21 of the Interpretation Act 1978; c. any exercise of the Royal Prerogative; or d. any enforceable community right within the meaning of section 2 of the European Communities Act 1972;
Minor Change	means any change that does not significantly/materially affect the nature of the Contractor Deliverables;
Notices	shall mean all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas Contractor	shall mean a Contractor that is registered and/or based outside of the UK;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Schedule of Requirements	means Schedule 2 (Schedule of Requirements) which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable;
Specification	means Schedule 5 (Statement of Work) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables;
Subcontractor	means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);
Supported Businesses	means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;
Transparency Information	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Con