|  |  |
| --- | --- |
|  |  |
|  |  |
|  |
|  |  | Your Reference: 713657451 |
|
| Our Reference: |

Contract No: 713657451 – KSA MOD Transformation Programme Phase 2

As you are aware, the Authority intends to enter into the above contract with you.

1. Please sign and return the enclosed final version of the Contract within 10 working days of the date of this letter to acknowledge your acceptance of the Terms and Conditions.
2. Please note that no Contract will come into force until both parties have signed it. The Authority will countersign the Contract and return a copy of the same to you.
3. Payment will be made in accordance with the attached Terms and Conditions. If your company has not already provided its banking details to the Defence Business Services (DBS) Finance Branch, please complete the Form CX723, which is available from the Gov.uk (<https://www.gov.uk/government/publications/dbs-finance-payments-nominate-a-bank-form>) and forward to DBS Finance, Walker House, Exchange Flags, Liverpool, L2 3YL.
4. The Authority may publish notification of the Contract and shall publish Contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition in the supply chain.
5. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.
6. Under no circumstances should you confirm to any third party that you are entering into a legally binding contract prior to both parties signing the Terms and Conditions, or ahead of the Authority's announcement of the Contract award.

Yours Sincerely,

Head Office Commercial

Contents

[General Conditions 3](#_Toc185422013)

[1. General 3](#_Toc185422014)

[2. Duration of Contract 4](#_Toc185422015)

[3. Entire Agreement 4](#_Toc185422016)

[4. Governing Law 4](#_Toc185422017)

[5. Precedence 4](#_Toc185422018)

[6. Amendments to Contract 5](#_Toc185422019)

[7. Variations to Specification 5](#_Toc185422020)

[8. Authority Representatives 5](#_Toc185422021)

[9. Severability 6](#_Toc185422022)

[10. Waiver 6](#_Toc185422023)

[11. Assignment of Contract 6](#_Toc185422024)

[12. Third Party Rights 6](#_Toc185422025)

[13. Standing Offer 6](#_Toc185422026)

[14. Disclosure of Information 6](#_Toc185422027)

[15. Publicity and Communications with the Media 8](#_Toc185422028)

[16. Change of Control of Contractor 8](#_Toc185422029)

[17. Environmental Requirements 9](#_Toc185422030)

[18. Contractor’s Records 9](#_Toc185422031)

[19. Notices 9](#_Toc185422032)

[20. Progress Monitoring, Meetings and Reports 10](#_Toc185422033)

[21. Supply of Contractor Deliverables and Quality Assurance 10](#_Toc185422034)

[22. Acceptance 11](#_Toc185422035)

[23. Rejection 11](#_Toc185422036)

[24. Contract Price 11](#_Toc185422037)

[36. Payment and Recovery of Sums Due 11](#_Toc185422038)

[37. Tax 12](#_Toc185422039)

[38. Debt Factoring 12](#_Toc185422040)

[39. Subcontracting and Prompt Payment 13](#_Toc185422041)

[40. Dispute Resolution 13](#_Toc185422042)

[41. Termination for Insolvency or Corrupt Gifts Insolvency: 14](#_Toc185422043)

[42. Termination for Convenience 15](#_Toc185422044)

[43. Material Breach 16](#_Toc185422045)

[44. Consequences of Termination 17](#_Toc185422046)

[45. Local Law and Customs 17](#_Toc185422047)

[46. Hostilities 17](#_Toc185422048)

[47. Access to Sites 17](#_Toc185422049)

[48. Options 17](#_Toc185422050)

[49. The Authority and the Contractor 18](#_Toc185422051)

[Acceptance 18](#_Toc185422052)

[Annex 1 DEFCONs – PROPOSAL 20](#_Toc185422053)

**Schedules :**

Schedule 1 – Definitions of Contract

Schedule 2 – Statement of Requirement

Schedule 3 – Contract Data Sheet

Schedule 4 – Contract Change Control Procedure

Schedule 5 – Milestone Payment Plan

## General Conditions

### General

a. The defined terms in the Contract shall be as set out in Schedule 1 (Definitions of Contract).

b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.

c. The Contractor warrants and represents, that:

(1) 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 the 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 arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicators or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor’s ability to perform its obligations under the Contract;

(3) as at the Effective Date of the 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 of 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 knowledge the Contractor, threatened) for its winding-up or dissolution of for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

d. Unless the context otherwise requires:

(1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.

(2) The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, expect 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 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 4 (Contract Data Sheet) to take or do that decision, act or thing on behalf of the Authority. (7) Unless excluded within the Conditions of the Contract or required by law, references to submissions of documents in writing shall include electronic submission.

### 2. Duration of Contract

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 4 (Contract Data Sheet) unless a Contract Option is invoked or it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

### 3. Entire Agreement

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

### 4. Governing Law

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

b. Subject to Clause 4.d and 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

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

d. 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 nay of its properties or other assets.

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

f. Where the Contractor’s place of business is not in England or Wales, the Contractor irrevocably appoints the solicitors or other persons in England and Wales detailed in Schedule 4 (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 arising out of or relating to the Contract or any issue connected therewith.

### 5. Precedence

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

(1) Conditions 1 – 50 of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 4 (Contract Data Sheet);

(2) Schedule 2 (Schedule of Requirements) and Schedule 6 (Milestone Payment Plan);

(3) The remaining Schedules; and

(4) Any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency within or between the documents referred to in Clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in Clause 5.a. Where the Parties fail to reach agreement and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the Dispute Resolution procedure in accordance with Condition 40 (Dispute Resolution).

### 6. 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 Control Procedures) 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 6.a above has been issued. For the avoidance of doubt, the Authority shall not be liable for any costs associated with change prior to formal agreement by both Parties.

### 7. 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, provide 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 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority’s Notice, unless otherwise specified.

b. Any variations that cause a change to:

(1) fit, form, function or characteristics of the Contractor Deliverables;

(2) the cost;

(3) Delivery Dates;

(4) the period required for the production or completion; or

(5) other work caused by the alteration, shall be the subject to Condition 6 (Amendments to Contract). Each amendment under Condition 6 shall be classed as a formal change.

### 8. 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 Representative in accordance with this Condition 8.

b. The Authority’s Representatives detailed in Schedule 4 (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 4 (Contract Date Sheet) in accordance with Condition 6 (Amendments to Contract).

### 9. Severability

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

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

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

### 10. 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.

### 11. Assignment of Contract

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

### 12. Third Party Rights

a. 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.

### 13. Standing Offer

a. In consideration for the payment of the sum of £1 (one pound) by the Authority to the Contractor(s), the Contractor(s) shall not for the duration of the Framework Agreement withdraw from or amend in any way the standing offers contained in the Framework Agreement except by agreement in accordance with DEFCON 503.

### 14. Disclosure of Information

a. Subject to Clause 14.d, 14.e, and 14.h:

(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 14.a and 14.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses 14.a and 14.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 restrictions on further disclosure from a third party which lawfully acquired the Information without any restrictions 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, parliamentary or equivalent KSA obligations. 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 - Definitions of Contract (including benchmarking organisations) for any purposes 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 Clause 14.f, 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”) of 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 representatives on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or 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.

j. The Authority shall have the right to disclose all Information received under the Contract to the Government of the KSA and the rights and obligations provided to the Authority by this Condition 14 (Disclosure of Information) shall apply to both the Government of the KSA and the Government of the UK.

### 15. Publicity and Communications with the Media

a. 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.

### 16. Change of Control of Contractor

a. The Contractor shall notify the Representatives of the Authority at the address given in Clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Sub-contractors. 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 conduct of the Contractor in the United Kingdom (UK) or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing a notice.

b. Each notice of change of control shall be submitted to:

*Head Office Commercial*

*Ministry of Defence*

*Main Building*

*Whitehall London SW1A 2HB*

*United Kingdom*

The Representative of the Authority shall consider the notice of change control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

c. The Authority may terminate the Contract by giving written notice to the Contractor within one (1) month of the Authority being notified in accordance with Clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.

d. If the Authority exercises its rights to terminate in accordance with Clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract.

e. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority’s rights set out in this condition.

### 17. Environmental Requirements

a. 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.

### 18. Contractor’s Records

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

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

(1) to enable the National Audit Office to carry out the Authority’s statutory audits and to examine and/or certify the Authority’s annual and interim report and accounts; and

(2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under Clause 18a. of this condition, and subject to the provisions of contract Clause 14, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representatives of the Authority, as the Authority may require.

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

(1) the end of the Contract term;

(2) the termination of the Contract; or

(3) the final payment, whichever occurs last.

### 19. 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 4 (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 4 (Contract Data Sheet), be 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 tenth Business Day in the case of airmail) after the day of posting;

(3) if sent by facsimile of electronic means:

(a) if transmitted between 08:00 and 15:30 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 08:00 on the first Business Day (recipient’s time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

### 20. Progress Monitoring, Meetings and Reports

a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 4 (Contract Data Sheet) and shall ensure that its Contractor’s Representatives are suitability qualified to attend such meetings.

b. The Contractor shall provide secretarial services, at no additional cost to the Contract Price to the Authority. Such secretarial services shall include but not be limited to the production and circulation of meeting agendas and producing minutes of meetings for approval by the Authority.

c. The Contractor shall submit progress reports to the Authority’s Representatives at the times and in the format (if any) specified in Schedule 4 (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 4 (Contract Data Sheet); and

(4) any other information reasonably requested by the Authority.

### 21. Supply of Contractor Deliverables and Quality Assurance

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with Schedule 2 (Statement of Requirement) 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 4 (Contract Data Sheet) in providing the Contractor Deliverables; and

(2) 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 21.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 healthy 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.

### 22. Acceptance

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 2 (Statement of Requirement). If no acceptance procedure is so specified acceptance shall occur when either:

(1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor’s ownership; or

(2) the time limit in which to reject the Contractor Deliverables defined in Clause 30.b has elapsed.

### 23. 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 to the Contractor at the Contractor’s risk and cost.

b. Rejection of any of the Contractor Deliverables under Clause 23.a shall take place by the time limit for rejection specified in Schedule 4 (Contract Data Sheet), or if no such period is specified within thirty (30) Business Days.

### 24. 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 4 (Contract Data Sheet).

b. The Contract Price shall be in Saudi Arabian Riyals (SAR).

c. The Contract Price shall exclude any applicable Value Added Tax (VAT) chargeable on the supply of Contractor Deliverables by the Contractor to the Authority. Any applicable VAT shall be a separate identifiable line item in addition to the Contract Price.

d. The Contract Price shall be fully inclusive of all items necessary to deliver the Contractor Deliverables in accordance with the requirements of the Contract. The Contract Price shall be fully inclusive of all Contractor’s activities, costs and profit for the supply and/or performance of the Contractor under the terms of this Contract.

e. The Contract Price shall not include nor shall the Authority be liable to pay: (1) costs incurred by the Contractor resultant on its failure to meet any requirements of the Contract; or (2) costs incurred by the Contractor resultant on negligence or wilful misconduct of the Contractor, its agents, officers or employees, or of its subcontractors, suppliers, their agents, officers, or employees.

f. Variations in exchange rate from Saudi Arabian Riyals (SAR) to GB Pounds (GBP) Sterling shall be reconciled on a monthly basis unless otherwise agreed between the Parties. For the avoidance of doubt the exchange rate(s) used to calculate the reconciliation sum due shall be the prevailing rate on the day that funds were transferred.

### 36. Payment and Recovery of Sums Due

a. Payments will only be made by the Authority if the Contractor Deliverables have been supplied and performed in accordance with Schedule 2 (Statement of Requirement).

b. Payment for Contractor Deliverables shall be made by electronic transfer in accordance with DEFCON 522 (Payment and Recovery of Sums Due) using the UK MOD's CP&F system to the Contractor’s nominated bank account. Prior to submitting any claims for payment under Clause 36a the Contractor will be required to supply their details to enable payment with the Authority.

c. Where the Contractor submits an invoice to the Authority in accordance with Clause 36b, the Authority will consider and verify that invoice in a timely fashion. d. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of thirty (30) calendar days from the date on which the Authority has determined that the invoice is valid and undisputed. e. Where the Authority fails to comply with Clause 36b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of Clause 36d after a reasonable time has passed.

f. 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.

g. Without prejudice to any other right or remedy, the Authority reserves the right to off-set 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.

h. For the avoidance of doubt, all payments for the Contract Price shall be made in accordance with the Milestone Payment Plan detailed in Schedule 6 (Milestone Payment Plan).

i. Any milestone payments made under the Contract shall be made at the sole discretion of the Authority and, if the Authority considers that the Contractor has failed to perform his obligation for a milestone under the Contract based on evidence, he may wholly or in part, withhold milestone payments or recover from the Contractor any milestone payments (including the addition in respect or VAT) already made, or both. The making of any milestone payment shall in no way reduce the liability of the Contractor to carry out his obligations under the Contract.

j. If at any time by reason of milestone payment made, overpayment to the Contractor results from the rejection of Articles under the Contract or from any other cause whatsoever, the amount of such overpayment shall be taken into account in assessing any further payments or shall be recoverable from the Contractor.

k. The Authority, where appropriate and agreed between both Parties, will authorise payment in advance for agreed costs.

### 37. Tax

a. The Contractor shall be solely responsible for the determination of any tax liability and compliance with any and all applicable tax laws and regulations in relation to this Contract.

b. Where applicable, the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due) a sum equal to the VAT chargeable on the tax value of the supply of Contractor Deliverables.

### 38. Debt Factoring

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 11 (Assignment of Contract), the Contractor may assign to a third party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 (“the Act”)). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 38 shall be subject to:

(1) reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 36.g;

(2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

(3) the Authority receiving notification under both Clauses 38.b and 38.c(2). b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c. The Contractor shall ensure that the Assignee:

(1) is made aware of the Authority’s continuing rights under Clauses 38.a(1) and 38.a(2); and

(2) notifies the Authority of the Assignee’s contact Information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Clauses 38.a(1) and 38.a(2). d. The provisions of Condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

### 39. Subcontracting and Prompt Payment

a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor’s obligations, duties or liabilities under the Contract.

b. The Contractor shall be responsible for the performance of any of its Subcontractors and it shall be the Contractor’s responsibility to ensure that any Subcontractor (including the Subcontractor personnel) is suitably qualified and experienced to carry out their responsibilities and obligations.

c. Where the Contractor enters into a Subcontract he shall cause a term to be included in such Subcontract:

(1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;

(2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) calendar days from the date on which the Contractor has determined that the involve is valid and undisputed;

(3) providing that where the Contractor fails to comply with Clause 39.c(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 39.c(2) after a reasonable time has passed; and

(4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as Clauses 39.c(1) to 39.c(4). Termination

### 40. Dispute Resolution

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

b. In the event that the dispute or claim is not resolved pursuant to Clause 40.a the dispute shall be referred to arbitration with its seat in London, England. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except anything that may be lawfully required in judicial proceedings relating to the arbitration or otherwise. d. The Parties shall continue to comply with, observe and perform their obligations under the Contract during any dispute regardless of its nature.

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

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

(1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or

(2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or

(3) the individual, the firm or, in the case of a firm constituted under English Law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or

(4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or

(6) where the Contractor is either unable to pay his 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 his debts is: (a) he has failed to comply with or to set aside a Statuary demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or (b) execution or other processes to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

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

(8) the court making an award of sequestration in relation to the Contractor’s estates. Where the Contractor is a company registered in England:

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

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

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

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

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

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

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

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

(1) offer, promise or give to any Crown servant or any servant of the KSA Government any gift or financial or other advantage of any kind as an inducement or reward; (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

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

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

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

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

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

e. In exercising its rights or remedies under this condition, the Authority shall:

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

(2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to): (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on 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.

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

### 42. Termination for Convenience

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 4 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the Parties already accrued up to the date of termination. Where only part of the Contract shall owe each other no further obligations in respect of the part of the Contract being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated but will continue to fulfil their respective obligation on all other parts of the Contract not being terminated.

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

(1) not start work on any element of the Contractor Deliverables not yet started;

(2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;

(3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;

(4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Clauses 42.b(2) and 42.b(3) of this Condition.

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

(1) the Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged material and any Contractor Deliverables in the course of manufacture that are:

(a) In the possession of the Contractor at the date of termination; and

(b) Provided by or supplied to the Contractor for the performance of the Contract, except such material and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

(2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

(a) all such unused and undamaged material; and

(b) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such material and Contractor Deliverables in accordance with the directions of the Authority;

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

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

(1) the Contractor taking all reasonable steps to mitigate such loss; and

(2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

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

f. The Contractor shall include in any subcontract over £250,000 (or relevant currency equivalent) which it may enter into for the purposes of the Contract, the right to terminate the subcontract under the terms of Clauses 42.a to 42.e expect that:

(1) the name of the Contractor shall be substituted for the Authority except in Clause 42.c (1);

(2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and

(3) the Contractor’s right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 42.

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

h. The Authority accepts that at the point of termination some costs will not be refundable to the Authority by the Contractor and these include but are not limited to:

(1) any accommodation costs for the Advisors where payment has been made in advance.

(2) any vehicles leased by the Contractor for the Advisors to use.

### 43. Material Breach

a. In addition to any other rights or remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract. b. Where the Authority has terminated the Contract under Clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor’s material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

(1) carrying out any work that may be required to make the Contract Deliverables comply with the Contract; or

(2) obtaining the Contractor Deliverable in substitution from another supplier.

### 44. Consequences of Termination

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

### 45. Local Law and Customs

a. The Contractor and its Subcontractor(s), including its employees in the KSA, shall comply with the laws, ordinances, traditions, rules and regulations of the Government of the KSA including those regarding taxes, customs duties and social insurance charges, and abide by such Government of the KSA security regulations as may be promulgated by the KSA Government.

b. In complying with Clause 45.a above any costs incurred shall be included in the Contract Price save in so far as resulting from a Change in Law.

### 46. Hostilities

a. In the event of the outbreak of war or of any civil or military conflict which might endanger the safety of non-Saudi personnel employed by the Contractor on the Project in the KSA the Parties shall, unless the Authority shall advise, that the Contract will be wholly suspended in which case it will be wholly suspended as economically as possible for such period as the Authority may decide, consult together about the steps necessary to ensure the safety of all such personnel and the continued performance of the Contract and about any changes in requirements which might be appropriate in the circumstances.

b. The Contractor and its personnel shall remain available to continue with the supply and/or performance of the Contractor Deliverables as far as is practicable and reasonable in any circumstances including war or civil or military conflict. Under no circumstances shall the Contractor or its personnel be permitted, requested or required to participate in combat operations undertaken by the armed forces of the KSA. The Government of the KSA will arrange such protection as is practicable and reasonable for the Contractor’s personnel.

### 47. Access to Sites

a. The Contractor shall ensure that personnel comply with any KSA Government instructions and any other instructions issued by the Authority to the Contractor, insofar as they are lawful, and appropriate to civilian staff.

### 48. Options

a. In consideration of the Authority agreeing to enter into this Contract, the Contractor hereby grants to the Authority the right to exercise any of the Options set out in Schedule 4 (Contract Data Sheet).

b. If the Authority elects to exercise one or more of the Options, at any time during the Contract term the Authority shall issue a notice to the Contractor confirming that the Authority is exercising the relevant identified Option.

c. The terms which the Parties intend shall govern each Option are those set out in this Contract including, without limitation, Schedule 2 (Statement of Requirement) and the Parties agree that these will apply where an Option is exercised by the Authority in accordance with this Clause 48.c.

d. Following the exercise of any of the Options pursuant to this Condition 48 any rights and obligations of the Parties existing under this Contract prior to the exercise of such Option shall continue to apply.

### 49. The Authority and the Contractor

1. Both Parties shall not be held liable for actions committed by any third party including the KSA Government and its agents, other than where expressly stated.

# Acceptance

Contract between AEI LIMITED and the UNITED KINGDOM MINISTRY OF DEFENCE

**1st January 2025 - 31st March 2025**

|  |  |
| --- | --- |
| On Behalf of the Secretary of State for Defence: | On behalf of the AEI SAUDI ARABIA LTD |
| NAME:  TITLE: | NAME:  TITLE: |
| SIGNATURE: | SIGNATURE: |

**Option Year 1: 1st April 2025 – 31st March 2026**

|  |  |
| --- | --- |
| On Behalf of the Secretary of State for Defence: | On behalf of the AEI SAUDI ARABIA LTD |
| NAME:  TITLE: | NAME:  TITLE: |
| SIGNATURE: | SIGNATURE: |

**Option Year 2: 1st April 2026 – 31st March 2027**

|  |  |
| --- | --- |
| On Behalf of the Secretary of State for Defence: | On behalf of the AEI SAUDI ARABIA LTD |
| NAME:  TITLE: | NAME:  TITLE: |
| SIGNATURE: | SIGNATURE: |

# Annex 1 DEFCONs – PROPOSAL

DEFCON 76

DEFCON 76 (Edn 11/22) – Contractor’s personnel at Government Establishments

*Note 1: the term ‘’Government Establishments’ shall comprise of both sites and facilities owned or operated by the KSA and/or UK Governments.*

DEFCON 126

DEFCON 126 (Edn 06/21) – International Collaboration

DEFCON 501

DEFCON 502 (Edn 10/21) – Definitions and Interpretations

DEFCON 503

DEFCON 503 (Edn 06/22) – Formal Amendments to Contract

DEFCON 515

DEFCON 515 (Edn 06/21) – Bankruptcy and Insolvency

DEFCON 522

DEFCON 522 (Edn 11/21) – Payment and Recovery of Sums Due

DEFCON 526

DEFCON 526 (Edn 08/02) – Notices

DEFCON 529

DEFCON 529 (Edn 09/97) – Law (English)

DEFCON 531

DEFCON 531 (Edn 09/21) – Disclosure of Information

DEFCON 539

DEFCON 539 (Edn 01/22) – Transparency

DEFCON 565

DEFCON 565 (Edn 07/23) – Supply Chain Resilience and Risk Awareness

DEFCON 606

DEFCON 606 (Edn 07/21) – Change and Configuration Control Procedure

DEFCON 609

DEFCON 609 (Edn 07/21) – Contractor’s Records

DEFCON 812

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