

- 7.1.3. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken or, in the case of any such document executed after the date of this Contract, shall be taken before such execution;
- 7.1.4. the obligations expressed to be assumed by the Contractor under this Contract are, or in the case of any such document executed after the date of this Contract shall be, legal, valid, binding and enforceable to the extent permitted by law and this Contract is or shall be in the proper form for enforcement in England;
- 7.1.5. the execution, delivery and performance by it of this Contract does not contravene any provision of:
 - 7.1.5.1. any existing Legislation binding on the Contractor, including Legislation which has been enacted but is not yet in force;
 - 7.1.5.2. the memorandum and articles of association of the Contractor;
 - 7.1.5.3. any order or decree of any court or arbitrator which is binding on the Contractor;
 - 7.1.5.4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
 - 7.1.5.5. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
 - 7.1.5.6. it is not the subject of any other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
 - 7.1.5.7. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, 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 (or any equivalent procedure);
 - 7.1.5.8. it shall not, and in entering into this Contract it has not, committed any Prohibited Act; and
 - 7.1.5.9. there is not and nor has there been any infringement or alleged infringement of any third party's IPR in connection with this Contract (excluding any Government Furnished Information).

and the Authority relies upon such warranties and representations.

8. Contractor Undertakings

- 8.1. The Contractor undertakes that for so long as this Contract remains in full force it shall:
 - 8.1.1. provide notice of any Dispute Proceedings to the Authority that are likely to affect the Contractor's ability to perform its obligations under the Contract or has the potential to cause reputational damage to the Authority, unless such notice is

precluded by the rules of the court, arbitrator, administrator, adjudicator, mediator or any other relevant authority with jurisdiction over the Dispute Proceedings:

- 8.1.2. within twenty (20) Business Days of the Contractor becoming aware that Dispute Proceedings may be threatened or pending; and
- 8.1.3. immediately after the commencement of Dispute Proceedings;
- 8.1.4. not undertake the performance of its obligations under this Contract otherwise than:
 - 8.1.4.1. at the Contractor's Premises; and
 - 8.1.4.2. through itself or a Sub-Contractor.

Status of Contractor Warranties and Undertakings

- 8.2. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

9. Contractor's Obligations

- 9.1. The Contractor shall provide the Contractor Deliverables to the Authority, all in accordance with the Contract and Good Industry Practice and shall, inter alia, offer the Intercept and Escort Craft(s) to the Authority fully in compliance with the Contract at the Contractor's Premises on the Required Delivery Date for Contractor to present Boat to Authority for Acceptance.
- 9.2. Without prejudice to the overriding obligation contained in Clause 9.1, the Contractor's responsibilities shall, unless provided otherwise in the terms of this Contract, include:
 - 9.2.1. design, construction, launch, equipping, completing and delivering of the Intercept and Escort Craft(s) to the Authority;
 - 9.2.2. providing In Service Support, if Option 2 (In-Service Support) is exercised in accordance with Clause 13 (Options)
 - 9.2.3. satisfactory completion of all Tests, Trials and Inspections required to prove the quality of the Contractor Deliverables in accordance with the Integrated Test and Evaluation Plan at Annex H of Schedule 6 (Integrated Project Management Plan);
 - 9.2.4. providing support during the Authority's Acceptance Trials up to Acceptance Off Contract in accordance with the Contract;
 - 9.2.5. the provision and proper fitting in place of all material, equipment, fittings and deliverables necessary for the completion of the Intercept and Escort Craft(s) as required by the Contract unless otherwise specified;
 - 9.2.6. the provision of all labour, plant, machinery, freight and port services necessary for the proper performance of the Contract;
 - 9.2.7. the provision of all necessary services, facilities for and assistance to the Authority's Representatives and the Authority's Contractors in accordance with the Contract;

- 9.2.8. the provision of all necessary access, facilities and drawings for any classification, certification, surveys or trials to the Classification Society or Regulatory Authorities in accordance with the Contract;
- 9.2.9. examination, testing, and if necessary retesting of Lifting Equipment; ensuring that, at Acceptance Off Contract of each Intercept and Escort Craft, there remains at least 80% of the total period between tests or surveys being completed and the next test or survey falling due;
- 9.2.10. provision of all fuels, lubricating oils, greases and hydraulic fluids required for setting to work and trials of the Intercept and Escort Craft(s) up to Acceptance Off Contract;
- 9.2.11. compliance with local Statutory Duties and Obligations up to Acceptance Off Contract and shall ensure that the Contractor Deliverables and any activities of the Contractor within the UK shall comply with UK Statutory Duties and Obligations;
- 9.2.12. supply of documentation and data for NATO Codification purposes in accordance with DEFCON 117 (Supply of Information for NATO Codification and Defence Inventory Introduction);
- 9.2.13. not, by any act or omission at any time, placing the Authority in breach of its obligations as an employer;
- 9.2.14. the Intercept and Escort Craft(s) and its' equipment being designed and built in metric units.
- 9.2.15. meeting all the requirements set out in Schedule 2A (Statement of Technical Requirements – Technical Baseline), Schedule 2B – Statement of Technical Requirements – Component 2 – Fitness for Purpose – ref Zodiac Milpro International Tender dated February 2023 as clarified by Up Issue of Documentation dated April 2023) and Schedule 2C (Statement of Technical Requirements – Contractors Proposal ref Zodiac Milpro International Tender dated February 2023 as clarified by Up Issue of Documentation dated April 2023) and Schedule 26 (Statement of Support Requirement – Build) and Schedule 27 (Statement of Technical Requirement– In-Service Support (Option)).
- 9.3. The Contractor shall not deviate from the Contract nor introduce any contrivance unusual in the kind of work covered by the Contract save as provided for in Clause 40 (Changes to the Contract).
- 9.4. Save in respect of the Contractor's Sea Trials or as expressly agreed in writing by the Authority, all work involved in providing the Contractor Deliverables shall be carried out at the Contractor's Premises.
- 9.5. The Contractor is responsible for producing a design of Intercept and Escort Craft that is safe to operate and fit for purpose by demonstrating to the Authority that the design developed by the Contractor meets the requirements of the Contract.
- 9.6. No advice, comment or information proffered, given or omitted by, or on behalf of, the Authority on or in relation to the Contractor's work in accordance with the Contract shall, in any way, extinguish, diminish or reduce the Contractor's obligations and responsibilities under the Contract to provide the Contractor Deliverables. Neither shall the activities of the Authority or its representatives including that of scrutiny of the design

produced by the Contractor under the Contract derogate from the Contractor's obligations and responsibilities under the Contract.

- 9.7. The Contractor acknowledges that any risk assessment, questionnaire or risk register which has, or may be undertaken or maintained in connection with this Contract is done so in a management capacity only. Such risk assessment activity does not affect the legal relationship between the Parties or in any way limit or exclude the Contractor's obligations under this Contract.

10. Duration

- 10.1. This Contract and the rights and obligations of the Parties to this Contract shall take effect on the date of this Contract and, except as set out in Clause 36 (Continuing Obligations), shall terminate on the earlier of:
- 10.1.1. the date on which the Contractor has discharged all of its obligations in respect of the Contractor Deliverables; or
 - 10.1.2. the Termination Date.
- 10.2. The prices recorded in Schedule 4a (Schedule of Requirements – Pricing and Required Dates) and Schedule 4b (Schedule of Requirements – In-Service Support – Pricing (Option)) will run for the following Financial Years (FY) -
- 10.2.1. Year 1 - Commencement Date to 31 March 2024;
 - 10.2.2. Year 2 – 1 April 2024 to 31 March 2025;
 - 10.2.3. Year 3 – 1 April 2025 to 31 March 2026;
 - 10.2.4. Year 4 – 1 April 2026 to 31 March 2027;
 - 10.2.5. Year 5 (Option) – 1 April 2027 to 31 March 2028;
 - 10.2.6. Year 6 (Option) – 1 April 2028 to 31 March 2029;

11. Price

- 11.1. The Contract contains a mixture of Firm and Fixed prices as stated in Schedule 4a (Schedule of Requirements - Pricing and Required Delivery Dates) and Schedule 4b (Schedule of Requirements – In-Service Support – Pricing (Option)). All prices quoted are exclusive of UK VAT in accordance with DEFCON 513 (Value Added Tax and Other Taxes).

Table 1 (Contract Deliverables) to Schedule 4a (Schedule of Requirements – Pricing and Required Delivery Dates)

- 11.2. Prices recorded in Schedule 4a (Schedule of Requirements - Pricing and Required Delivery Dates) in Table 1 (Contract Deliverables) as Firm are not subject to variation in any respect (including on account of fluctuations in wages, and/or cost of materials, interest rates or currency exchange rates) save as provided for in Clause 40 (Changes to the Contract).

Table 3 (Rates) and Table 4 (Main Assemblies) to Schedule 4a (Schedule of Requirements – Pricing and Required Delivery Dates)

- 11.3. Prices recorded in Schedule 4a (Schedule of Requirements - Pricing and Required Delivery Dates) in Table 4 (Main Assemblies) for Year 1 - FY 23/24, Year 2 – FY 24/25, Year 3 – FY 25/26 as Firm are not subject to variation in any respect (including on

account of fluctuations in wages, and/or cost of materials, interest rates or currency exchange rates) save as provided for in Clause 40 (Changes to the Contract).

- 11.4. The prices stated in Schedule 4a (Schedule of Requirements – Pricing and Required Delivery Dates) for Year 4 – FY 26/27, Year 5 – FY 27/28, (Option) and Year 6 – FY 28/29 (Option) are FIXED at Year 1 – FY 23/24 price levels. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased. For the purposes of agreeing Firm prices for Year 4 – FY 26/27, Year 5 – FY 27/28, (Option) and Year 6 – FY 28/29 (Option) any such variation shall be calculated in accordance with the following formula:

$$V = P (a+b (O_i/O_0)) - P$$

Where:

V represents the variation of price P represents the FIXED price as stated in Schedule 4a (Schedule of Requirements - Pricing and Required Delivery Dates) O represents the index **Other Transport Equipment for Domestic Market (G72N)**.

O₀ represents the average OUTPUT Price Index figure for the calendar year prior to Commencement Date.

O_i represents the average OUTPUT Price Index figure for calendar year prior to the period for which the variation is being added.

a represents the Non- Variable Element (NVE) 10%

b represents the Variable Element 90%

$$a+b=1$$

- 11.5. The Index referred to in Clause 11.4 above shall be taken from the following Tables:

OUTPUT Price Index - e.g. ONS Publication MM22 Table 2 'Price Indices of UK OUTPUT: All Manufacturing and Selected Industries', or, Table 4 'Price Indices of Products Manufactured in the UK'.

- 11.6. Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for Variation of Price clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
- 11.7. In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the contract and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
- 11.8. In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The

methodology outlined by the Office for National Statistics used for rebasing indices (as in Clause 11.7 above) shall then be applied.

- 11.9. Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.
- 11.10. The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.
- 11.11. Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.
- 11.12. Claims under this Clause shall be submitted to the Bill Paying Branch, certified to the effect that the "requirements of this Clause 11 have been met.

12. Payment

- 12.1. Payments shall be in Pounds Sterling.
- 12.2. The Contractor shall submit their claim for payment, in accordance with DEFCON 522 (Payment).

Supportability Documentation, Training, Craft Model and Security (Line Items 1 to 5 of Schedule 4a – Schedule of Requirements - Pricing and Required Delivery Dates)

- 12.3. The Contractor shall submit their claim for payment on satisfactory completion of all work under this Contractor Deliverable, in accordance with DEFCON 522 (Payment) and in accordance with the Payment Scheme set out in Schedule 4c to the Contract.

Intercept and Escort Craft Nos IEC-01 to IEC-24 and Ballistic Protection Kits, Road Trailers and Transport Cradles (Line Items 6 to 66 of Schedule 4a – Schedule of Requirements - Pricing and Required Delivery Dates)

- 12.4. The Authority shall, subject to the following provisions of this Clause, make to the Contractor advances against the price(s) payable per Intercept and Escort Craft and Ballistic Protection Kits and Road Trailers and Transport Cradles for Line Items 6 to 66 of Schedule 4a - Schedule of Requirements - Pricing and Required Delivery Dates) to the Contract ("interim payments") in accordance with the Payment Scheme set out in Schedule 4c to the Contract.
- 12.5. The Contractor shall be entitled to interim payments, to be claimed in accordance with this Clause 12 for each stage under the Payment Scheme (Schedule 4c) when:
 - 12.5.1. the Contractor has completed all work comprised in the stage for which the interim payment is sought in accordance with the Contract at Schedule 4c;
 - 12.5.2. all previous stages have been completed, unless the parties expressly agree otherwise; and

- 12.5.3. the Contractor shall have complied with all its contractual obligations which enable the Authority to monitor the Contractor's contractual performance, including but not limited to those obligations related to the provision of information to the Authority.
- 12.6. Notwithstanding Clause 12.5 above, the Authority shall not be obliged to make an interim payment to the Contractor if it has reasonable cause to believe that the Contractor will be unlikely to render complete performance of its obligations in respect of Line Items 6 to 80 of Schedule 4a (Schedule of Requirements – Pricing and Required Delivery Dates) to the Contract.
- 12.7. Where the Authority intends to rely on Clause 12.6 above as the basis for rejecting any claim for an interim payment which the Contractor may make, the Authority shall give to the Contractor notice in writing of its intention together with the Authority's reasons for the rejection.
- 12.8. The Authority shall without prejudice to any other right / remedy of either party be entitled to recover in full all interim payments made under the Contract where:
- 12.8.1. the Contract, or the part of the Contract under which Line Items 6 to 66 of Schedule 4a (Schedule of Requirements – Pricing and Required Delivery Dates) are to be provided, is terminated otherwise than in accordance with DEFCON 656B (Termination for Convenience – Contract over £5m) or expires by reason of passing of time; and the Contractor has failed to complete performance of Line Items 6 to 66 of Schedule 4a (Schedule of Requirements – Pricing and Required Delivery Dates).
- 12.9. In the event of repayment to the Authority under the provisions of Clause 12.8 above then all that which vested in the Authority under the provisions of DEFCON 649 (Vesting) and which related to Line Items 6 to 66 of Schedule 4a (Schedule of Requirements – Pricing and Required Delivery Dates) to the Contract shall re-vest in and become the absolute property of the Contractor.
- 12.10. Payment of an interim payment by the Authority under this Clause 12 shall not, unless expressly stated to do so, constitute:
- 12.10.1. acceptance by the Authority of any contractual deliverable;
- 12.10.2. a representation by the Authority that the Contractor has complied with any contractual obligations; or
- 12.10.3. a waiver of the Authority's right to subsequently claim that the conditions for payment of that interim payment were not satisfied.

Provision of In Service Support (Schedule 4b (Schedule of Requirements – In-Service Support – Pricing (Option)))

- 12.11. The Contractor shall submit their claim for payment on satisfactory completion of all work under each Work Request Form (MOD Boats Form 1020), in accordance with DEFCON 522 (Payment).

13. Options

- 13.1. The prices detailed in Table 4 (Main Ancillaries) of Schedule 4a (Schedule of Requirements - Pricing and Required Delivery Dates) to this Contract are a mixture of Firm priced and Fixed priced which are subject to adjustment in accordance with Clause 11 (Price).