# Offer of Contract



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| Def Comrcl BP3 | | | |  |
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| Kentigern House,  65 Brown Street,  Glasgow,  G2 8EX | | | |  |
| Email: | | | |
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| Dextrous Web  1 King’s Cross Bridge  London  N1 9NW | | |  | | |  |  | | |
|  | | | | |  |  |  | | |
|  | Our Reference:705571452 | | |
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|  |
|  | Date: 13/12/22 | | |
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|  | |  | | |  |  |  | | |

Dear

**Offer of Contract 705571452 for** **WORDPRESS HOSTING, MAINTENANCE AND SUPPORT (FOR DEFENCE PEOPLE TEAM MICROSITES/EXTERNAL WEBSITES)**

1. You are hereby informed of the Authority’s requirement, and you are invited to accept the Offer of Contract, detailed in the attached Schedule of Requirements. The Schedule describes the requirements and sets out the Contract terms and conditions which will take effect on acceptance by you of the Authority’s Offer.
2. 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.
3. 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.
4. 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.
5. 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.
6. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.

1. Under no circumstances should you confirm to any third party that you are entering into a legally binding contract for the Provision of the sexual harassment survey - academic review and inputprior to both parties signing the Terms and Conditions, or ahead of the Authority's announcement of the Contract award.
2. Please note that Defcon 532B (Protection of Personal Data) will apply to this contract**.**

Yours sincerely,

**Def Comrcl BP3**

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| --- | --- |
| **Offer and Acceptance** | |
| Section A) **Offer**  Contract **705571452** constitutes an offer by the Authority for the supplier to supply / provide the Contractor Deliverables.  By signing this DEFFORM 10B the Contractor agrees to be bound by the attached contract amendment, and they acknowledge that all other terms and conditions remain unchanged. | Section B) **Acceptance of Offer**  I acknowledge receipt of the Departments Contract,  I confirm that I accept the Offer it contains and agree to be bound by its terms and I acknowledge that all other terms and conditions of the Contract remain unchanged. |
| Signed by*:*  Name (Block Capitals):  Position: Senior Commercial Manager  BUSINESS PARTNER 3  For and on behalf of the Authority  Authorised Signatory  Date: 13/12/22 | Signed by:  Name  (Block Capitals):  Position:  For and on behalf of the contractor  Authorised Signatory  Date1: |  |

**Schedule 1**

**STATEMENT OF REQUIREMENT – CONTRACT FOR WORDPRESS HOSTING, MAINTENANCE AND SUPPORT (FOR DEFENCE PEOPLE TEAM MICROSITES/EXTERNAL WEBSITES)**

1. **The Purpose of the Project**

1a. To provide digital expertise to the Defence People Team in the hosting/maintaining and on-going software support of three external microsites that deliver strategic effect against Priority Objective 04 in the Defence Plan (two for the Armed Forces Day, one for the Armed Forces Covenant). The websites have a vital and enduring function in informing the Armed Forces (AF) communities and general public on the advances of the Covenant pledges and activity related to the Armed Forces Day. Both are essential to delivering the Dept’s objective to “secure public support for the AF” and supporting the welfare and rights of the AF Community. The Covenant website will be of crucial importance in communicating the new Covenant Duty and statutory guidance, and implications for the Armed Forces Community.

1b. The goal of the websites is to fully inform all stakeholders linked to Armed Forces Day and the Armed Forces Covenant.

2. **The Stakeholders**

2a. The Customer is the Defence People Team, and specifically: DS Sec (Armed Forces Day micro-sites x2) and the Covenant Team (Armed Forces Covenant micro-site).

2b. The Hands-On Users of the Product/Service are: military serving personnel; military families (serving/veterans and reservists); local authorities/public bodies; businesses and employers.

2c. Other Stakeholders: DDC; general public.

3. **Constraints**

3a. Solution. The websites are already mature and hosted on the GovPress software platform, a bespoke product offered by Dextrous Web (DXW) which is based on WordPress content management system. Due to the simplicity and accessibility of WordPress, and the security and public-sector facing nature of GovPress, the solution is constrained to these using these systems and thus single source supply (DXW)

3b. Schedule. A 12-month contract with a maximum 3 x one year rolling extensions, with a start date Dec 22.

3c. Invoicing. Def People would like the costs of website support to be divided into 2 invoices, respectively for DS Sec and Covenant Team. Greater amplification and evidence of work completed will also be expected, alternatively a “push” system that advises on how many hours of support are “unspent” on a monthly basis.

4. **Naming Conventions and Terminology.** N/A.

5. **Relevant Facts and Assumptions:**

5a. DXW will continue to own and deliver the GovPress host system during the terms of contract.

5b. Business Case was initially approved across the board on 18 Feb 22: funding is available from both AFPSpt and DS Sec (proportionally) for FY22/23. Ongoing assessment has created a delay in process. This necessitated a subsequent cost increase to one off costs which have been revised and included in the Business Case.

5c. Its assumed funding will be available for any contract extensions.

6. **The Scope of the Service** – extracted from Business Case

6a. Provision of hosting/maintenance and general software support of three MOD micro-sites.

6b. Service Description:

* Large Virtual Machine (VM) hosting all 3 sites.
* Site maintenance (all 3 sites).
* Website support per month: 3hrs/month for Armed Forces Day sites, 3hrs/month for Armed Forces Covenant site.
* Armed Forces Covenant site content review (one-off)
* Analytics for Armed Forces Covenant site.

7. **Functional Requirements.** Deliver three micro-sites that are available 24/7, provide flexibility for the user to update content directly, and provide on-call support as required. Platform must secure and robust and based on WordPress content management system. Hosting, basic maintenance of sites, and support (by hour) is required.

8. **Performance Requirements.** Continuous access to the websites without interruption for upgrades, or presentation of performance issues that cannot be rectified quickly (e.g. 48hrs), denotes success. Any support requests should be actionable within the hours allocated per quarter, and DXW must be transparent with the customer on how those hours are being utilised (any spare must be communicated before quarter end or be accrued to following quarter). Assistance in developing analytics for Armed Forces Covenant website also expected to ensure optimal choices to better track utilisation rates.

9. **User Documentation and Training.** N/A

10. **Maintainability, Change and Support Requirements.** Not required: software will be updated within the contract spec by the supplier (DXW).

11. **Security Requirements.** Nil – there is no content that will be held on the site above unclassified.

12. **Cultural Requirements.** N/A.

13. **Legal Requirements.** N/A.

14. **Supporting Tasks/Assets required from the Customer.** None

15. **Migration to the New Product.** N/A

16. **Risks.** Reputational risks to MOD if websites are unsupported and become inaccessible.

**Schedule 2**

**Pricing Schedule**

|  |  |  |  |
| --- | --- | --- | --- |
| **Serial** | **Description** | **Duration** | **Firm Price**  **(£)** |
| 1. | WORDPRESS HOSTING, MAINTENANCE AND SUPPORT (FOR DEFENCE PEOPLE TEAM MICROSITES/EXTERNAL WEBSITES) | 1 Year with 3 One-year Extension Options 13/12/22-12/12/23 | £15225 + VAT |
| 2. | Start Up Costs | 1 Year with 3 One-year Extension Options 13/12/22-12/12/23 | £6750 + VAT |
|  | | | £21975 + VAT |

**Schedule 3- Standard Terms and Conditions**

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**MOD Terms and Conditions for Less**

**Complex Requirements**

**1 Definitions - In the Contract:**

Article means, in relation to Clause 9 only, an object which during production is given a special shape, surface or design which

determines its function to a greater degree than does its chemical composition;

The Authority means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this

document as "the Authority"), acting as part of the Crown;

Business Day means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

Contract means the agreement concluded between the Authority and the Contractor, including all terms and conditions, associated

purchase order, specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance

with Clause 2.c;

Contractor means the person, firm or company specified as such in the purchase order. 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;

Contractor Deliverables means the goods and / or services including packaging (and supplied in accordance with any QA requirements

if specified) which the Contractor is required to provide under the Contract in accordance with the schedule to the purchase order;

Effective Date of Contract means the date stated on the purchase order or, if there is no such date stated, the date upon which both

Parties have signed the purchase order;

Firm Price means a price excluding Value Added Tax (VAT) which is not subject to variation;

Government Furnished Assets (GFA) is a generic term for any MOD asset such as equipment, information or resources issued or made

available to the Contractor in connection with the Contract by or on behalf of the Authority;

Hazardous Contractor Deliverable means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous

material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more

hazardous materials or substances and each material or substance that may be so released;

Issued Property means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the

Contractor in connection with the Contract by or on behalf of the Authority;

Legislation means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of

the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the

European Communities Act 1972.

Mixture means a mixture or solution composed of two or more substances;

Notices means all notices, orders, or other forms of communication required to be given in writing under or in connection with the

Contract;

Parties means the Contractor and the Authority, and Party shall be construed accordingly;

PPT means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;

PPT Legislation means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any

secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic

Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

Plastic Packaging Component(s) shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated

secondary legislation;

Sensitive Information means the information listed as such in the purchase order, being information notified by the Contractor to the

Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as

relevant) and remains sensitive information at the time of publication;

Substance means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any

additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be

separated without affecting the stability of the substance or changing its composition;

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to the Contract,

except for (i) any information which is exempt from disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the

Environmental Information Regulations Act 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information.

**2 General**

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

b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.

c. If there is any inconsistency between these terms and conditions and the purchase order or the documents expressly referred to

therein, the conflict shall be resolved according to the following descending order of priority:

(1) the terms and conditions;

(2) the purchase order; and

(3) the documents expressly referred to in the purchase order.

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

e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its

rights or remedies. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third

Parties) Act 1999 by any person that is not a Party to it.

g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in

accordance with English Law, and subject to Clause 16 and without prejudice to the dispute resolution procedure set out therein, the

Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this

Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

**3 Application of Conditions**

a. The purchase order, these terms and conditions and the specification govern the Contract to the entire exclusion of all other terms and

conditions. No other terms or conditions are implied.

b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating

to the subject matter of the Contract.

**4 Disclosure of Information**

Disclosure of information under the Contract shall be managed in accordance with DEFCON 531 (SC1)

**5 Transparency**

a. Notwithstanding any other condition of this Contract, and in particular Clause 4, the Contractor understands that the Authority may

publish the Transparency Information to the general public.

b. Subject to Clause 5.c, the Authority shall publish and maintain an up-to-date version of the Transparency Information in a format readily

accessible and reusable by the general public under an open licence where applicable.

c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information would be contrary to the public

interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the

public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority

acknowledges that it shall only exclude Transparency Information from publication in exceptional circumstances and agrees that where it

decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories

of information that have been excluded from publication and reasons for withholding that information.

c. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency

Information, in accordance with the principles set out above. Where the Authority publishes Transparency Information, it shall:

(1) before publishing redact any information that would be exempt from disclosure if it was the subject of a request for information

under the FOIA and/or the EIR , for the avoidance of doubt, including Sensitive Information;

(2) taking into account the Sensitive Information set out in the purchase order, consult with the Contractor where the Authority intends

to publish information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably,

shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA

and/or EIR; and

(3) present information in a format that assists the general public in understanding the relevance and completeness of the information

being published to ensure the public obtain a fair view on how this Contract is being performed.

**6 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 the purchase order;

(4) marked with the number of the Contract; and

(5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the purchase order, by electronic mail.

b. Notices shall be deemed to have been received:

(1) if delivered by hand, on the day of delivery if it is the receipient’s Business Day and otherwise on the first Business of the recipient

immediately following the day of delivery;

(2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;

(3) if sent by facsimile or electronic means:

(a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient’s time) on completion of receipt by the sender of

verification of the transmission from the receiving instrument; or

(b) if transmitted at any other time, at 09:00 on the first Business Day (recipient’s time) following the completion of receipt by the

sender of verification of transmission from the receiving instrument.

**7 Intellectual Property**

a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any

intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the

Contractor Deliverables.

b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and,

subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to

assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably

require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim.

c. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and

placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act

1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under

its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property

involved.

Notification of Intellectual Property Rights (IPR) Restrictions

d. Where any of the Conditions listed below (1 to 3) have been added to these Conditions of the Contract as Project Specific DEFCONs at

Clause 21, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating

to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should

reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 2 (Notification of Intellectual Property Rights (IPR)

Restrictions):

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

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

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

e. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any

required additions, inaccuracies or omissions in Schedule 2.

f. Any amendment to Schedule 2 shall be made in accordance with DEFCON 503 (SC1).

**8 Supply of Contractor Deliverables and Quality Assurance**

a. This Contract comes into effect on the Effective Date of Contract.

b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Schedule to the purchase order.

c. The Contractor shall ensure that the Contractor Deliverables:

(1) correspond with the specification;

(2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be

limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this

respect the Authority relies on the Contractor’s skill and judgement; and

(3) comply with any applicable Quality Assurance Requirements specified in the purchase order.

d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in

the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising

in the application for any such licence.

**9 Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables**

a. Nothing in this Clause 9 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

b. As soon as possible and in any event within the period specified in the purchase order (or if no such period is specified no later than

one month prior to the delivery date), the Contractor shall provide to the Authority’s representatives in the manner and format prescribed in

the purchase order:

(1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables contain Hazardous Substances,

Mixtures or Articles; and

(2) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB

Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);

(3) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous

Substance an SDS is to be made available on request; and

(4) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation

List, Restriction List and / or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of

the Article, sufficient information, available to the supplier, to allow safe use of the Article including, as a minimum, the name of that

Substance at the time of supply.

c. For substances, Mixtures or Articles that meet the criteria list in clause 9.b above:

(1) if the Contractor becomes aware of new information which may affect the risk management measures or new information on the

hazard, the Contractor shall update the SDS/safety Information and forward it to the Authority and to the address listed in the purchase

order; and

(2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management

measures identified in the safety information supplied, shall report this information in writing to the Contractor.

d. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the

requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design

Requirements for Weapons and Associated Systems.

e. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the

Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details on DEFFORM 68 of:

(1) activity; and

(2) the substance and form (including any isotope).

f. If the Substances, Mixtures and Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor

shall additionally provide details on DEFFORM 68 of the magnetic flux density at a defined distance, for the condition in which it is packed.

g. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances,

Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substance, Mixtures or Articles in

Contractor Deliverables shall be regarded as a material breach of Contract under Condition 18 (Material Breach) for which the Authority

reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the

Contract in accordance with Condition 18.

h. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must

comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

**10 Delivery / Collection**

a. The purchase order 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. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance

with Clause 10.a.

c. The Authority shall be deemed to have accepted the Contractor Deliverables within a reasonable time after title and risk has passed to

the Authority unless it has rejected the Contractor Deliverables within the same period.

**11. Marking of Contractor Deliverables**

a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in the purchase order or if no such

requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of

the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor

Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number shown in the

Contract.

b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor

Deliverables.

c. The marking shall include any serial numbers allocated to the Contractor Deliverable.

d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required

information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 12

(Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

**12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or**

**Explosives)**

a. The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the purchase

order and Def Stan 81-041 (Part 1 and Part 6).

b. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in

this Clause 12. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following

unless otherwise specified in the Schedule to the purchase order:

(1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;

(2) the International Maritime Dangerous Goods (IMDG) Code;

(3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and

(4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

c. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package

corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

**13 Plastic Packaging Tax**

a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.

b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.

c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any

PPT they have paid that relates to the Contract.

d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance

with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such

information that the Authority requires in relation to any such adjustment.

e. In accordance with DEFCON 609 (SC1) the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make

them available to the Authority when requested on reasonable notice for reasons related to the Contract.

f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the

Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable

the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT

Legislation. This shall include, but is not limited to the Contractor providing:

(1) confirmation of the tax status of any Plastic Packaging Component;

(2) documents to confirm that PPT has been properly accounted for;

(3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and

any other product specifications that may be required; and

(4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging

Components.

g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure

any information that has been provided in accordance with clause 13.f above is accurate.

h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the

Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence

for that statement.

i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the

Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

**14. Progress Monitoring, Meetings and Reports**

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the purchase order and

shall ensure that its Contractor’s representatives are suitably qualified to attend such meetings. Any additional meetings reasonably

required shall be at no cost to the Authority.

**15 Payment**

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause

15b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F)

electronic procurement tool.

b. Where the Contractor submits an invoice to the Authority in accordance with clause 15a, the Authority will consider and verify that

invoice in a timely fashion.

c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the

Authority has determined that the invoice is valid and undisputed.

d. Where the Authority fails to comply with clause 15b 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 15c after a reasonable time has passed.

e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the

performance of the Contractor’s obligations nor as a waiver of its rights and remedies under this Contract.

f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the

Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract

with the Authority, or with any other Government Department.

**16 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 16.a the dispute shall be referred to arbitration and 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 it is agreed between the Parties that the arbitration process and anything said, done or produced in or in

relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in

judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the

arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of

the proceedings, without the concurrence of all the Parties to the arbitration.

**17 Termination for 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:

a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (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;

(2) commits or has committed any prohibited act or any offence under the Bribery Act 2010 with or without the knowledge or authority

of the Contractor in relation to this Contract or any other contract with the Crown;

(3) has entered 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.

b. In exercising its rights or remedies to terminate the Contract under Clause 17.a. 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.

c. Where the Contract has been terminated under Clause 17.a.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.

**18 Material Breach**

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate

effect by giving written notice to the Contractor where the Contractor is in material breach of their obligations under the Contract. Where

the Authority has terminated the Contract under Clause 18 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.

**19 Insolvency**

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration.

This is without prejudice to any other rights or remedies under this Contract.

**20 Limitation of Contractor’s Liability**

a. Subject to Clause 20.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).

b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:

(1) for:

a. any liquidated damages (to the extent expressly provided for under this Contract);

b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor’s failure to perform or underperform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under

this Contract);

c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this

Contract;

d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under

this Contract;

(2) under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the contract;

(3) for death or personal injury caused by the Contractor’s negligence or the negligence of any of its personnel, agents, consultants or

sub-contractors;

(4) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;

(5) in relation to the termination of this Contract on the basis of abandonment by the Contractor;

(6) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or

(7) for any other liability which cannot be limited or excluded under general (including statute and common) law.

c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including

statute and common) law.

**21 The project specific DEFCONs and DEFCON SC variants that apply to this Contract are:**

DEFCON 532

DEFCON 532(A)

**22 The special conditions that apply to this Contract are:**

**23 The processes that apply to this Contract are**

**Schedule 4 – Notification of Intellectual Property Rights (IPR) Restrictions (i.a.w. Clause 7) for Contract No. PART A – Notification of IPR Restrictions**

**DEFFORM 711**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1. ITT/Contract Number | |  |  |  |
| 2. ID# | 3. Unique Technical Data Reference Number/ Label | 4. Unique Article Identification Number/Label | 5. Statement Describing IPR Restriction | 6. Ownership of the Intellectual Property Rights |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
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| 10 |  |  |  |  |

\* Article(s), for the purpose of this form only, means part or the whole of any item, component or process which the Contractor is required under the Contract to

supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article

PART B – System / Product Breakdown Structure (PBS) The Contractor should insert their PBS here. For software, please provide a Modular Breakdown Structure.

(Please see the DEFFORM 711 Completion Notes for guidance on completing Schedule 5)

DEFFORM 711 Narrative Condition

1. Where any of the conditions listed below (a-d) form part of the terms and conditions of the Contract or where other similar notification obligations exist, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those conditions, or of which the Contractor is or should reasonably be aware as at the date of the Contract, are disclosed in DEFFORM 711 annexed to the Contract.

a) DEFCON 15 - (including notification of any self-standing background Intellectual Property).

b) DEFCON 90 - including copyright material supplied under clause 5.

c) DEFCON 91 - Limitations of Deliverable Software under Clause 3b.

d) DEFCON 632 - Notifications under clause 1.

2. The Contractor shall promptly notify the Authority in writing if it becomes aware during the performance of the Contract of any required additions, inaccuracies or omissions in DEFFORM 711.

3. Any amendment to DEFFORM 711 shall be made in accordance with DEFCON 503.