



Ministry of Defence

Contract No: 703962451 For: Provision of Technical Service Framework and Mission Equipment to Enable a T31 Shore Integration Facility

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

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And

**Contractor Name and address:
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DEFINITIONS

“Acceptance” means, in accordance with the Acceptance Management Arrangements, the point at which a particular requirement or set of requirements has been met or a level of performance has been demonstrated. Acceptance may be subject to Concessions agreed between the Contractor and the Authority and “Accepted” shall be construed accordingly;

“Acceptance Management Arrangements” means the acceptance management arrangements set out in Schedule 4 (Acceptance Management Arrangements);

“AQAP” Means a NATO Allied Quality Assurance Publication;

“Articles” means all goods (excluding data and documentation) which the Contractor is required under this Contract to supply pursuant to the Contract Activities;

“Authority” means the Secretary of State for Defence, acting on behalf of the Crown; Authority Representatives;

“Authority Data” means:

1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are supplied to the Contractor by or on behalf of the Authority; or
2. any Personal Data for which the Authority is the Data Controller;

“Authority Service Provider” means any third-party providing services in accord with the Permitted Purpose to the Authority in connection with the Contract Deliverables or any third party to whom the Authority sub-contracts or delegates any of its rights and obligations under this Contract;

“Authority’s Commercial Officer” means the representative for the Authority as stated in Schedule 9 Contract Data Sheet;

“Authority’s Project Manager” means the representative for the Authority as stated in Schedule 9 Contract Data Sheet;

“Business Day” means any day excluding Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;

“Certificate of Conformity” means a certificate provided by the Contractor in accordance with any applicable Quality Management Plan;

“Change” has the meaning given to that term in Schedule 10 (*Change Control Procedure*);

“Change Request” has the meaning given to that term in Schedule 10 (*Change Control Procedure*);

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

“Concession” has the meaning given to that term in paragraph 4.2 of DEFSTAN 05-61 (Part 1, Issue 7);

“Consignee” shall be determined by reference, respectively, as referenced in DEFFORM 111;

“Contract” means the main body of this contract together with its schedules and annexes and the Referenced Documents, and any DEFCONs and DEFFORMs incorporated into this Contract;

“Contract Award” means the date at which formal acceptance by the Contractor to the terms set out in the Contract through the signing and return of the DEFFORM 10.

“Contract Deliverables” means all things (including any item, work product, data, record, documentation, hardware or software (in object code format)) provided to the Authority under this Contract (including items to be delivered on specified dates in any project plans generated under this Contract, and the non-exhaustive list of items set out in the Contract CDRL);

“Contract Effective Date” (CED) means the date on which the contract was awarded (see Contract Award);

“Contract Price” means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of their part of the Contract as determined under the provisions of the Contract;

“Contract Year” means each 365 day period from Contract Award;

“Contractor” means the Party who, by the Contract, undertakes to supply the Articles, or perform the Service, or both for the Authority as is provided by the Contract. Where the Contractor is an individual or a Definitions and Interpretations Page 2 of 3 partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any Party to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;

“Contractor Deliverables” means the works, goods and/or the services, including packaging (and Certificate(s) of Conformity supplied in accordance with the Quality Standards) which the Contractor is required to provide under this Contract;

“Crisis Event” means a material threat to the national security and defence, or a material adverse effect on the national interests, of the United Kingdom, or the occurrence of a state of war, crisis, tension or other emergency (whether involving hostilities or otherwise); or, a request from NATO, the EU or the United Nations for support or assistance in relation to international obligations; or, any other event of similar nature or cause;

“Data Item Description” or **“DID”** means a data item description document containing proposed content for associated CDRL delivery;

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

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

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other.

“DEFCON” means the Ministry of Defence’s standard Defence conditions accessible via the Authority’s acquisition system guidance;

“Defect” means any error, defect or damage in or to the Works or any part thereof (including, in each case, in any design, engineering, materials or workmanship), any non-conformities and any failure of the Works or any part thereof to comply with this Contract, together with any damage arising out of or in common therewith, including any Warranty Defect;

“DEFFORM” means the Ministry of Defence’s standard Defence forms accessible via the Authority’s acquisition system guidance;

“DEFFORM 111” means the completed DEFFORM 111 appended to this Contract at Schedule 9 Annex A (*DEFFORM 111*);

“DEFFORM 177 Agreement” means the form of agreement, proposed to be entered into between the Authority and certain sub-contractors, set out in Schedule 16 (*Form of DEFFORM 177 Agreement*);

“DEFSTAN” means the Ministry of Defence’s Defence standards accessible via the Knowledge In Defence site;

“Deliverable” means any deliverable supplied or contracted to be supplied by or on behalf of the Contractor as part of the Works, including but not limited to, any Article, design, report, analysis, chart, diagram, model or other documentary deliverable (in both hard and electronic form);

“Delivered” means the article supplied by the Contractor has met all of the requirements of Clause 52 (Delivery / Collection);

“Delivery” means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 52 and Delivered and Delivery shall be construed accordingly;

“Delivery Date” means the date on which the Article has met all of the requirements as set out in Clause 52 (Delivery / Collection);

“Dependency Failure” means a failure by the Authority to perform Authority responsibilities identified in Schedule 7 (*Assumption, Exclusions, and Dependencies*);

“Diversion Order” means requests for the urgent delivery of specified quantities of Contractor Deliverables to consignees other than that stated in the Contract;

“DPA 2018” means the Data Protection Act 2018;

“Expiry Date” means date given at Clause 3;

“Firm Price” means a price, agreed for the Articles or Services, or both, which is not subject to variation; Notice;

“FOI Information” has the meaning given to “Information” under Section 84 of the FOIA;

“FOIA” means the Freedom of Information Act 2000;

“Force Majeure Event” has the meaning given to that term in Clause 9 (*Force Majeure*);

“Gainshare” means an approach to the review and adjustment of an existing contract where the adjustment provides benefits to both Parties. It is a mutual activity requiring the agreement of both Parties;

“Good Industry Practice” means, at any time, the exercise of that degree of skill, care, and diligence, which would reasonably and ordinarily be expected at such time from skilled and experienced individuals;

“Government Furnished Asset” or **“GFA”** means Authority-owned assets to be supplied to the Contractor in the performance of this Contract (including any equipment, facilities, information, resources, access, services, personnel or any other resource provided to the Contractor by the Authority for the purposes of this Contract) as set out in Schedule 1.2.1 (*Government Furnished Assets/Facilities/Services*), including GFE, GFF, GFI and/or GFS as applicable;

“HM Government” means Her Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“Intellectual Property Rights” or **“IPR”** means patents, rights to inventions, trade marks and related goodwill, service marks, domain names, design rights (whether registrable or otherwise), applications for any of the foregoing, rights in computer software (including object code and source code), copyright and related rights, database rights, confidential information (including Know-how and trade secrets), trade or business names and other similar rights or obligations, whether registrable or not, in any country (including, but not limited to, the United Kingdom) for the full term of the rights together with any applications, extensions and renewals;

“ITAR” means the US International Traffic in Arms Regulations;

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

“Normal Business Hours” means between the hours of 0900 and 1700 (Local UK time) any day but excluding Saturday, Sunday and Public or Bank Holidays observed in England and Wales.

“Options” means additional deliverables or contract extension periods that the Authority can chose to undertake in accordance with Clause 4;

“Packaging” when used as a verb shall mean the preparation of Articles for transportation, storage and delivery in accordance with the Contract. The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures;

“Packaging” when used as a noun shall mean the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with the Contract;

“Parties” means the Contractor and the Authority;

“Party” refers to either the Contractor or the Authority;

“Permitted Purpose” means the installation, assessment, certification, evaluation, operation, maintenance, support in service, modification and repair, and disposal of the articles delivered including the Contract Deliverables;

“Quality Assurance Representative” means the person who is notified to the Contractor for delegated quality assurance responsibilities within the Authority;

“Remedial Work” means all works to redesign, repair, reconstruct, rectify, replace or otherwise make good any Defect, as well as any damage arising therefrom;

“Safety Data Sheet” has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);

“Security Aspects Letter” means the executed security aspects letter to be provided by the Authority Representative as scheduled to this Contract at Schedule 12 (*Security Aspects Letter*)

“Service/Services” means all services (excluding the supply of Articles) which the Contractor is required under the Contract to perform or to fulfil;

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

“SQEP” means a suitably qualified and experienced person;

“Statement of Work” or **“SoW”** means any of the statements of work set out in Schedule 1.2 (*Statements of Work*);

“Sub-Contract” means any contract placed by the Contractor in connection with, or for the purposes of, this Contract;

“Sub-Contractor” means any company, firm or person (of any tier) with whom a sub-contract is placed by the Contractor in connection with, or for the purposes of, this Contract;

“Term” means the period from and including the Contract Award to and including the Expiry Date unless terminated earlier in accordance with the Termination Clauses;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

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

“VAT” means value added tax, charged on transactions, acquisitions and imports as set out in Section 1 of the Value Added Tax Act 1994;

“Warranty Defects” means any Defect during the Warranty Period;

“Warranty Period” Warranty Period” means, a period of 12 months commencing on the date of an item completing the Harbour Acceptance Test Equipment (HAT-E) event in accordance with the Schedule 4 Acceptance Management Arrangements, or 18 months commencing upon the delivery of the item to PTP; whichever event occurs first

“Working Day” means any day excluding Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;

“Works” means the provision of any supplies and/or performance of services by the Contractor or Subcontractor relating to the Contract.

GENERAL

1 Order of Precedence

- 1.1 In the event of any inconsistency between the terms of this Contract and any task placed under this Contract and/or between this Contract and any other document referred to in this Contract, then the following order of precedence shall apply:

- 1.1.1 Schedule of Requirements;
- 1.1.2 Narrative Clauses of the Contract;
- 1.1.3 Approved Task Authorisation Forms (in the form of Schedule 5)
- 1.1.4 All other Schedules (including Appendices and Attachments)
- 1.1.5 DEFCONs

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail. For the avoidance of doubt, sub-Clause 1.1.1 is highest ranked, 1.1.5 is lowest ranked.

- 1.2 Where there is a conflict or inconsistency between any of the Standards included in the Contract the order of precedence shall be:

- 1.2.1 Allied Publications and NATO Standards
- 1.2.2 Defence Standards
- 1.2.3 British Standards and International Standards
- 1.2.4 All remaining reference standards

- 1.3 The Contractor shall notify the Authority's Commercial Officer immediately upon becoming aware of any conflict and or inconsistencies between the documents which comprise this Contract and shall recommend to the Authority's nominated Commercial Officer which document or requirement should prevail giving reasons for such recommendation. The Authority's nominated Commercial Officer shall direct which document or requirement shall prevail (taking due account of any representations made by the Contractor in this regard) and determine, in conjunction with the Contractor, what amendment or adjustment, if any, should be made to the Contract.
- 1.4 For the avoidance of doubt, any work which is carried out pursuant to a Task Authorisation Form (TAF) does not give rise to a separate contract, rather this work shall be regarded as forming part of this Contract, and shall be governed by its terms.

2 Period of Contract (Duration)

- 2.1 For the purposes of authorising work against the Contract the period of the Contract shall commence on Contract Effective Date.

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- 2.2 Work authorised by a Task Authorisation Form (TAF) in accordance with Clause 38. (Contract Tasking) of the Contract during the period of the Contract referred to at Clause 2.1 (Period of Contract) above shall, notwithstanding the expiry of the period of the Contract, remain valid until its completion by the Contractor in accordance with the terms and Clauses of Contract, and in the case of termination of the Contract, shall continue unless also terminated pursuant to the terms of this Contract. In such circumstances, the terms of this Contract shall continue to apply to govern the performance of such work.
- 2.3 The rights and obligations of the Parties to this Contract shall remain in force up to and including Contract Expiry Date or until such time as the Contractor has met all of his obligations for the provision of the services required and completed all tasks placed under Schedule 1 (*Schedule of Requirements*) for this Contract as at that date, unless, in any case, terminated earlier in accordance with the provisions of this Contract or extended by the agreement of both Parties through a Contract amendment under the provisions of DEFCON 503 (*Amendments to Contract*). *Subject to the conditions defined within this Contract and or English Law.*
- 2.4 This Contract shall come into force from the date of the Contractor's signature of the DEFFORM 10.

3 Contract Expiry

- 3.1 Subject to the provisions of any Clause hereof permitting early termination of this Contract, the initial term of this Contract ("Term") shall commence as of "Contract Effective Date" and shall expire on "Contract Effective Date" + 36 Months ("Expiry Date").

4 Options

- 4.1 Prior to the end of the initial Expiry Date at Clause 3.1 The Authority shall be entitled to exercise two, 2-year Options by giving no less than 6 months written notice before contract expiry.
- 4.2 The Contractor shall however, if required by the Authority, work to a shorter notice period where this is reasonably achievable.
- 4.3 Notwithstanding the rights of the Authority under this Clause 4 (Options);
- 4.3.1 the Authority shall not be obliged to exercise any or all of the options stated herein;
 - 4.3.2 in the event that the Authority does not exercise any or all of the Option(s) specified under this Clause, the Contractor shall not be entitled to payment of compensation for any work undertaken by the Contractor in anticipation of the Authority exercising the rights under this Clause.

5 Schedule Opportunity

Redacted under FOIA Section 43, Commercial interests

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6 General Obligations

- 6.1 The scope of this Contract shall be as detailed in the Statement of Work at Schedule 1.2 of the Schedule of Requirements to the Contract. With regard to Schedule 1.2.5 Technical Services of the Schedule of Requirements, detailed specifications shall be defined in each separate Task Authorisation Form (TAF) as provided for at Clause 39 (Contract Tasking) below and raised during the period of the Contract.
- 6.2 The Services rendered under this Contract shall be to the requirements of the Contract. All queries of a technical nature should be addressed to the Authority's Project Manager or his nominated representative.
- 6.3 The Contractor shall not proceed with any work under Schedule 1.2.5 Technical Services of the Schedule of Requirements until such time as a price has been agreed and written authority to proceed has been provided by the Authority's Commercial Officer.
- 6.4 No guarantee can be given that there will be any resulting work placed with the Contractor under Schedule 1.2.5 Technical Services of the Schedule of Requirements to the Contract.

7 Performance of Work

- 7.1 The Contractor is responsible for supplying each of the Services set out in Schedule 1 (Schedule of Requirements):
 - 7.1.1 within the agreed Contract Price;
 - 7.1.2 by the task delivery dates, and
 - 7.1.3 in accordance with the requirements set out in the Statement of Work at Schedule 1.2 of the Schedule of Requirements to the Contract.
- 7.2 Subject to DEFCON 611 (Issued Property) the Contractor shall be responsible for any discrepancies, errors or omissions in any documentation provided by the Contractor or Sub-Contractor notwithstanding that the Authority may have seen the documents and subject to any specific written direction provided by the Authority.
- 7.3 Any questions, which the Contractor has on any aspect of the work under the Contract, shall be referred to either the Authority's Project Manager or the Authority's Commercial Officer detailed in Schedule 9 (*Contract Data Sheet*) to this Contract.

8 Relief Event

- 8.1 For the purposes of this Clause 8, "**Relief Event**" means:
 - 8.1.1 a breach of the Authority's obligations in relation to the timely delivery of GFA but only to the extent that the process set out in DEFCON 611 has been followed by the Contractor and the GFA is actually required by the Contractor on the relevant specified date;
 - 8.1.2 any act or omission on the part of the Authority in breach of the Contract which directly results in a delay to the schedule;
or

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- 8.1.3 any Change of Law that meets the requirements of Clause 62 Or
- 8.2 For the purposes of this Clause 8, “**Relief**” means:
- 8.2.1 that the Contractor shall not be in breach of Contract as a result of the Relief Event;
 - 8.2.2 if the relevant Relief Event has directly caused the Contractor to be unable to achieve any Stage, or other contractual date, then such Milestone or other contractual date shall be postponed by such time as reasonably agreed by the Authority for such Relief Event, taking into account the likely effect of the delay;
 - 8.2.3 if the relevant Relief Event has a direct cost impact, the Price shall be considered by the Authority for increase by an amount that is reasonable, having due regard of all relevant circumstances; or
 - 8.2.4 if the Relief Event continues such that the Contractor is prevented by such Relief Event from achieving a Milestone during the Term, the Parties shall reallocate the relevant Fee payment attributed to that Milestone so that the Contractor receives an amount equivalent to that Fee Payment on meeting the relevant criteria applicable to the Milestone to which the relevant Fee Payment has been reallocated, provided that the Contractor shall only be granted Relief to the extent that the Relief Event is not caused by and is beyond the reasonable control of and not attributable to the performance of the Contractor or its agents, employees, or Sub-Contractors and which could not have been prevented by the exercise of reasonable care and skill by the Contractor or that other person for whom the Contractor is responsible.
- 8.3 The Contractor shall take reasonable measures to mitigate the effects of any Relief Event. The Contractor shall not be obliged to incur unreasonable expenditure in any mitigation, other than where such expenditure is agreed in accordance with the Change Control Procedure. Such mitigation shall include the Contractor using reasonable endeavours to negotiate with any Sub-Contractor to delay the delivery of any GFE to the Sub-Contractor.
- 8.4 If and to the extent that a Relief Event has occurred or the Contractor reasonably believes that one will occur, then in addition to its obligations under Clause 20 (*Early Warning*), the Contractor shall promptly and in any event within Twenty Five (25) Business Days (or within such other period as may be proposed by the Contractor and approved by the Authority (acting reasonably)) from the later of the date of commencement of the Relief Event/the date on which the Contractor reasonably believed the Relief Event commenced and the date on which the Contractor should have become aware of the Relief Event, send a notice to the Authority confirming the Relief Event has occurred, providing such information as is necessary to demonstrate the occurrence and impact of such Relief Event, which shall include the following:
- 8.4.1 the Relief sought by the Contractor:

8.4.2 where the relevant Relief Event causes the Contractor to be unable to achieve a Milestone and/or other contractual date or the Contractor reasonably believes it will cause it to be unable to achieve a Milestone and/or other contractual date:

- (i) a description of how and why the Relief Event has an impact on the achievement of one or more Milestone(s) and/or other contractual date(s), and a detailed description of which part(s) of the relevant Milestone(s) and/or other contractual date(s) is/are affected;
- (ii) the due date for the completion (prior to the occurrence of the Relief Event) of the work element(s) affected by the Relief Event;
- (iii) the expected actual date for completion of the work element(s) affected by the Relief Event;
- (iv) the expected delay to achievement of the Milestone(s) and/or other contractual date(s) affected by the Relief Event;
- (v) details of the mitigating steps being taken/proposed to be taken by the Contractor to reduce the impact of the Relief Event and the delay and/or impact of the delay on the achievement of the contractual date(s) and/or other obligation(s) affected by the Relief Event; and
- (vi) any action that the Contractor requests the Authority to take to reduce the delay and/or the impact of the delay,

in the case of Clauses (i) and (iii) to (vi) above, having regard to the date on which the Authority informs the Contractor that it expects to be able to achieve its obligations and/or rectify the breach that has resulted in the Relief Event;

8.4.3 where the relevant Relief Event has or the Contractor reasonably believes it will have a direct cost impact:

- (i) a description of how and why the Relief Event has direct cost impact;
- (ii) the estimated quantum of the direct cost impact with supporting evidence;
- (iii) details of the mitigating steps being taken/proposed to be taken by the Contractor to reduce the cost impact; and
- (iv) any action that the Contractor requests the Authority to take to reduce the cost impact,

having regard in each case to the date on which the Authority informs the Contractor that it expects to be able to achieve its obligations and/or rectify the breach that has resulted in the Relief Event.

8.5 To the extent that the Contractor does not comply with Clause 8.3 or 8.4 and as a result the Relief required is greater than it would have been had the Contractor complied with Clause 8.3 or 8.4, then the Contractor shall not be entitled to such greater Relief.

8.6 Where the Relief is agreed or determined pursuant, the Relief shall be processed in accordance with Schedule 10 (Change Control Procedure).

9 Force Majeure

9.1 The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract a Force Majeure Event is defined as one of the following:

- a) acts of nature;
- b) war;
- c) hostilities;
- d) fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence;
- e) terrorism;
- f) civil commotion;
- g) changes in law relevant to the contract performance;
- h) UK ban on trade with source country
- i) National strikes
- j) Foreign government policy

9.2 The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.

9.3 Subject to Clause 9.4 below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

9.4 The maximum extension of time granted under this clause shall be limited to three months after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect.

10 Measures in a Crisis

10.1 In the event of a "Crisis Event", the Contractor shall continue with the provision of the Service.

10.2 If during a Crisis Event the Authority requests any changes or variations whatsoever (including the acceleration of any part of the Service) to the performance of the Service, the Contractor shall forthwith use reasonable endeavours to comply with the Authority's requests.

10.3 The Authority shall provide the Contractor with as much notice as possible of a change to the Service including but not limited to capacity increase and or surge in requirement where its needs are reasonably foreseeable. Such notice shall be provided in writing to the Contractor's commercial officer or programme manager.

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- 10.4 In the event that the Authority makes any requests pursuant to this Clause 10 (*Measures in a Crisis*) the Contractor shall provide prices and turn round times in a reasonable time period from receipt of notice from the Authority. Where higher levels of capacity increase and/or surge are required the Contractor shall provide (as appropriate) prices, turn round times and phased implementation times in a reasonable time from the request. The evaluation of the variation to the Service shall be made in accordance with Clause 42 (*Contract Change Proposals*) below and Schedule 10 (*CCP*) of this Contract.
- 10.5 The Contractor's liabilities in respect of any works executed pursuant to Clause 10 (*Measures in a Crisis*) above shall be proportionately reduced; taking due cognisance of, amongst others, the Crisis Event and any increases in volumes and the provision of information within limited time parameters.
- 10.6 The Contractor shall submit payment claims to the Authority that represent the Contractor's assessment of the adverse financial effects incurred by it. Payment claims shall be made monthly in arrears.
- 10.7 Upon full evaluation of each and every variation either:
- 10.7.1 the Contractor shall raise a further claim for payment to represent any under-recovery by the Contractor in the month following the full evaluation; or
 - 10.7.2 the Contractor shall allow a deduction in other monies claimed under this Contract to represent any over-payments made to the Contractor in the month following full evaluation.

11 Quality Control Records

- 11.1 Unless otherwise directed in the Contract, the Contractor shall retain quality control/inspection records or such of those records as may be agreed by the Authority, for a period of five (5) years from completion of all work under the Contract and shall make them accessible to the Authority during Normal Business Hours on request. At the end of the retention period the Contractor shall seek advice from the Authority regarding the disposal/continued retention of the Quality Control/Inspection Records, and the Contractor shall not dispose of such records without the written authority of the Authority. (but only in the event that the Authority requires the Contractor to retain records for longer than five (5) years, the Authority shall bear the Contractor's reasonable costs for the period exceeding five (5) years only). Exceptionally, when requested by the Contractor, earlier disposal may be authorised in writing by the Authority.

12 Certificate of Conformity

- 12.1 The Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 1 (Schedule of Requirements) and any applicable quality plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- 12.2 The Contractor shall consider the CofC to be a record in accordance with DEFCON 609 (Contractor's Records).

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12.3 The Information provided on the CofC shall include:

- 12.3.1 Contractor's name and address;
- 12.3.2 Contractor unique CofC number;
- 12.3.3 Contract number and where applicable Contract amendment number;
- 12.3.4 details of any approved concessions;
- 12.3.5 acquirer name and organisation;
- 12.3.6 Delivery address;
- 12.3.7 Contract Item Number from Schedule 1 (Schedule of Requirements);
- 12.3.8 description of Contractor Deliverable, including part number, specification and configuration status;
- 12.3.9 identification marks, batch and serial numbers in accordance with the Specification;
- 12.3.10 quantities;
- 12.3.11 a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

(Exceptions or additions to the above are to be documented)

- 12.4 Where Schedule 1 (Schedule of Requirements) and any applicable quality plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at Clause 12.3. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with DEFCON 609 (Contractor's Records).

13 Quality Monitoring (Assurance & Control Procedures)

- 13.1 A Deliverable quality plan is not required for the purposes of this Contract. The Contractor shall ensure that the Contract is carried out in accordance with the quality requirements specified at Clause 43 (Quality Assurance).
- 13.2 Quality management will be monitored under activities included within Schedule 15 – Project Delivery.

14 Obsolescence Management

- 14.1 The Contractor shall implement a proactive obsolescence management strategy in accordance with BS EN 62402:2007 and provide yearly equipment obsolescence reports. This will include as a minimum:
- 14.1.1 The ongoing identification and review of obsolescence concerns and issues;
 - 14.1.2 Identification of mitigation action of obsolescence concerns;
 - 14.1.3 Identification of resolution action of obsolescence issues.

15 Configuration Control Management Plan

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- 15.1 Pursuant to DEFCON 606 (*Change and Configuration Control Procedure*), the Contractor shall implement and maintain a Joint Configuration Control Management Plan (JCMP) in accordance with DEFSTAN 05-57 (Issue 6) which defines the configuration control process to be followed for the duration of the Contract.
- 15.2 Unless already agreed by the Authority before the Contract being let, the Configuration Control Management Plan shall be submitted for acceptance within three (3) months of the date of Contract Award.

16 Marking of Contractor Deliverables

- 16.1 The Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of DEF-STAN 05-132. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN).
- 16.2 Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- 16.3 The marking shall include any serial numbers allocated to the Contractor Deliverable.
- 16.4 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 Clause 17 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

17 Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

- 17.1 Packaging responsibilities are as follows:
 - 17.1.1 The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
 - 17.1.2 The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable in the Schedule 1 (Schedule of Requirements).
 - 17.1.3 The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all subcontractors.
- 17.2 The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:

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17.2.1 The Contractor shall provide Packaging which:

- a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
- b) is labelled to enable the contents to be identified without need to breach the package; and
- c) is compliant with statutory requirements and this Condition.

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

17.3.1 The Health and Safety At Work Act 1974 (as amended);

17.3.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);

17.3.3 The REACH Regulations 2007 (as amended); and

17.3.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

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

17.4.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and

17.4.2 The Air Navigation (Amendment) Order 2019.

17.5 As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with Clause 59 (Supply of Data for Hazardous Articles, Materials and Substances).

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

17.6.1 If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract Schedule 1 (Schedule of Requirements), to state the following:

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

- 17.7 The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of DEFCON 619A (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
- 17.8 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- 17.9 In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with DEFCON 609 (Contractor's Records).
- 17.10 This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- 17.11 Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- 17.12 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
- 17.13 Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
- 17.14 In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

18 Diversion Orders

- 18.1 The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- 18.2 The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- 18.3 The Authority reserves the right to cancel the Diversion Order.

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- 18.4 If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- 18.5 If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- 18.6 The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with DEFCON 503 (Formal Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

19 Self-to-Self Delivery

- 19.1 Where any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

20 Early Warning for Contractor Supplied Deliverables

- 20.1 If the Contractor is aware that it will not be able to provide any Contractor Deliverables of Schedule 1 (Schedule of Requirements)
- 20.1.1 3 months in advance of the relevant delivery date; or
- 20.1.2 within ten (10) Business Days of the Contractor becoming aware
- the Contractor shall notify the Authority in writing informing of the nature of such delay and/or non-delivery.
- 20.2 Once any notification has occurred, the following provisions set out in this Clause shall apply:
- 20.2.1 the Authority and Contractor (each acting reasonably) shall negotiate in good faith for a period of ten (10) Business Days (or such longer period as may be agreed between the Parties, each acting reasonably) with a view to investigating and agreeing a plan to mitigate the effect of the prospective late or non-delivery of the relevant Contractor Deliverables; and

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20.2.2 if the Parties agree a mitigation plan in accordance with Clause 20.2.1 on or prior to the expiry of the discussion period, then the Parties shall implement that mitigation plan and:

- a) the Contractor's obligation in respect of the delivery of the relevant Contracted Deliverable shall be modified as set out in the mitigation plan; and
- b) make such amendments to Schedule 1 (*Schedule of Requirements*) in accordance with Clause 42 (*Contract Change Proposals*).

21 Gainshare

- 21.1 For the purposes of this Clause 21 "Gainshare" shall have the following meaning:
"Gainshare means an approach to the review and adjustment of an existing contract where the adjustment provides benefits to both Parties. It is a mutual activity requiring the agreement of both Parties"
- 21.2 If either Party wishes to submit a Gainshare opportunity, then such a proposal shall be raised and assessed as per the change procedure set out in Clause 42 (*Contract Change Proposals*).
- 21.3 If both Parties agree to the proposal, then implementation shall be achieved through an amendment to the Contract as set out in Clause 29 (*Authorisation of Contract Amendments*).
- 21.4 For the avoidance of doubt, the decision on whether to proceed with any Gainshare proposal shall require agreement by both Parties to the Contract.
- 21.5 If the Gainshare proposal is unsuccessful, the decision of the Party reviewing the proposal shall be final.

22 Access, Audit and Inspection

- 22.1 The Contractor shall grant the Authority's nominated representative(s) or agent(s) reasonable access to the Contractor's systems and records relating to the Contract from the date of execution of the Contract.
- 22.2 The Contractor shall keep full and accurate records (including, without limitation, financial documents (including Supplier quotations/tenders) evidencing expenditure and income) with respect to the Contract.
- 22.3 The Contractor shall grant the Authority and its authorised representative(s) or agent(s) the right of access during Normal Business Hours to visit the Contractor's premises and to inspect and/or take copies from the records, relating to the Contract, and the Contractor shall provide all reasonable assistance at all times during the currency of the Contract, and for two (2) years after the placement of the final order there under, for the purposes of allowing the Authority and/or its authorised representative(s) or agent(s) to obtain such information as is necessary to:

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- 22.3.1 fulfil the Authority's obligations to supply information in relation to Parliamentary, Governmental, judicial, FOI or other administrative purposes;
 - 22.3.2 carry out an audit of the Contractor's compliance with the obligations set out in this Contract including, without limitation, the Contractor's obligations with respect to the meeting of performance and quality standards, the security and confidentiality of data, computer integrity and other security requirements;
 - 22.3.3 investigate suspected fraud or other impropriety by the Contractor, the Authority and / or any third party in relation to the Contract, in which case the provisions of this Clause shall be limited to the powers of the law enforcement authorities granted by law; or
 - 22.3.4 verify the accuracy of and appropriate application of charges, prices and any proposed or actual variations to the charges and prices in accordance with the Contract.
- 22.4 The Authority and its authorised representative(s) or agent(s) shall respect the confidentiality of the Contractor and of its Sub-Contractors/suppliers in respect of all data and records accessed during any audit carried out pursuant to the Clauses set out in this Clause 22 (*Access, Audit and Inspection*).
- 22.5 The Authority shall give the Contractor at least ten (10) Working Days notice of the exercise of its audit rights under this Clause, except:
- 22.5.1 where circumstances dictate (e.g. Ministerial /Parliamentary requirements);
 - 22.5.2 under the circumstances set out in Clause 22 (*Access, Audit and Inspection*), in which case the Authority shall be entitled to conduct an audit without notice; or
 - 22.5.3 there shall be a standing right for the Authority or its agent(s) to carry out a spot check audit in conjunction with the quarterly progress meetings held at the Contractor's premises.
- 22.6 Visits by the Authority and/or its authorised representative(s) or agent(s) to Sub-Contractors shall normally only be made after consultation with the Contractor. However, ad-hoc visits may also occur where it is felt that such a visit is in the Authority's interest.
- 22.7 Clauses 22.1 to 22.6 (*Access, Audit and Inspection*) shall in no way limit the rights of access, audit and inspection afforded other than under this Clause 22 (*Access, Audit and Inspection*) to the Authority and its authorised representative(s) or agent(s).

Audit Access to ITAR Material

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- 22.8 Access will not be provided to areas or information containing ITAR controlled equipment or data unless the personnel requiring access are appropriately authorised and cleared to do so in accordance with the relevant export licence. It shall be the responsibility of the Authority to ensure personnel have the necessary clearance.

23 Commercial Exploitation

- 23.1 The provisions for commercial exploitation shall be agreed between the Contractor and the Authority to be agreed prior to contract award. Such provisions shall only apply to equipment, reports and software which has been designed and/or developed to meet the requirements of this specific Contract and funded by the Authority but the amounts payable to the Authority shall be adjusted to reflect commercial exploitation of intellectual property developed outside of the Contract but for which the Contractor is otherwise obliged to make payment and also in recognition of any intellectual property developed outside of the Contract and for which no obligation to make a payment to the Authority exists. Specimen Commercial Exploitation agreements are attached at Schedule 11 (*Specimen Commercial Exploitation Levy*) to this Contract however it is recognised that the specific provisions shall be subject to agreement between the Authority and the Contractor on a case-by-case basis.

24 Retention of Records

- 24.1 During the currency of the Contract and thereafter for not less than five (5) years, the Contractor shall maintain a copy of all information delivered under the Contract. The copy of the information shall be maintained in media and formats agreed to by the Authority and the Contractor and shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of their assets to any third party, and copies of such information so maintained shall be supplied as required from time to time to the Authority. The Contractor shall be entitled to the reasonable costs of compilation and delivery for information supplied beyond any Contract deliverables.

25 Private Venture Funding

- 25.1 The Contractor shall not introduce any private venture funding to Deliverables and/or data under the Contract without the prior written agreement of the Authority's Commercial Officer. Failure to follow this will result in such elements whether hardware, software or otherwise being considered as being funded under this Contract with the Authority having rights to use and have used associated information consistent with this premise.

26 Preservation of Rights

- 26.1 The IPR provision of the Contract are without prejudice to the rights of the Authority accrued outside of the Contract.

27 Sub-Contractor Agreements (IPR)

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- 27.1 The Contractor shall not enter into any commitment with a Sub-Contractor entailing design and development pursuant to the Contract, until the Sub-Contractor has entered into an agreement with the Authority in the form set out at Schedule 16 - Design Rights and Patents (Sub-Contractor's Agreements (DEFFORM 177)) which provides rights consistent with those secured under the Contract. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor. If, in any case, the Contractor is unable to comply with this Clause, he shall report the matter to the Authority's Commercial Officer and await further instructions before placing the Sub-Contract or order.

28 Business Continuity Management

- 28.1 In the event of major failure or disaster which impact on the Contractor's processes used in the support provided under this Contract, the Contractor shall maintain continuity of the support in accordance with the Business Continuity Plan (BCP), which shall contain the crisis management plan and disaster recovery plan, contained in the latest issue of the Contractor's document, which shall be updated in accordance with Clause 28.4 (*Business Continuity Management*) below.
- 28.2 The Contractor's BCP shall set out the arrangements that are to be invoked to ensure that the business processes and operations, required by the Contractor to provide the support covered under this Contract, remain supported including but not limited to:
- 28.2.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the business processes and operations; and
 - 28.2.2 the steps to be taken by the Contractor upon resumption of the business processes and operations in order to address anyrate prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 28.3 The disaster recovery plan shall only be invoked upon the occurrence of a disaster. In the event of a complete loss of service or in the event of a disaster, the Contractor shall immediately invoke the BCP (and shall inform the Authority promptly of such invocation).

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- 28.4 The Contractor shall review part or all of the BCP (and the risk analysis on which it is based) on a regular basis and as a minimum once every twelve (12) calendar months in line with the Contractor's procedures.

29 Authorisation of Contract Amendments

- 29.1 Notwithstanding the provisions of DEFCON 503 (*Formal Amendments to Contract*), DEFCON 801 (*Amendments to QDCs – Consolidated Versions*) and Clause 42 (*Contract Change Proposals*), nothing said, done or written by any person, nor anything omitted to be said, done or written by any person, including, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, or modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or be deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by the Authority's Commercial Officer. Only the Authority's Commercial Officer is authorised to vary the terms and Clauses of the Contract and such variation shall only have effect when agreed in writing.
- 29.2 Any formal notice required to be given by one Party to the other Party shall be in writing in the English language. Such notices shall be sent to or delivered to the persons holding the nominated position, addresses, and/or facsimile numbers notified to the other Party to the Contract from time to time for this purpose and until so notified, and for the purposes of Clause 4 of DEFCON 526 (*Notices*), all notices hereunder shall be sent or delivered to the persons set out in Clauses 29.4 and 29.5 (*Authorisation of Contract Amendments*).
- 29.3 It is agreed between the Parties that, without prejudice to any other provisions of the Contract, for the purposes of Clause 2 of DEFCON 526 (*Notices*) the electronic submission of notices is permitted.
- 29.4 Pursuant to Clause 29.2 (*Authorisation of Contract Amendments*), all notices to the Authority shall be supplied to the Authority's Commercial Officer, or as otherwise specified in the Contract, or such other address as the Authority may by written notice specify to the Contractor for the purpose of this Clause 29 (*Authorisation of Contract Amendments*).
- 29.5 Pursuant to Clause 29.2 (*Authorisation of Contract Amendments*), all notices to the Contractor shall be supplied to the nominated representative specified in Schedule 9 (Contract Data Sheet) or such other address as the Contractor may by written Notice specify to the Authority for the purpose of this Clause 29 (*Authorisation of Contract Amendments*).

30 Sub-Contract Requirements

- 30.1 Sub-Contracting any part of this Contract shall not relieve the Contractor of responsibility to the Authority, subject to the provisions of the Contract, for the timely, economic and proper execution of the Contract.
- 30.2 The Contractor shall bear full responsibility for the proper performance of all Sub-Contractors. Accordingly, the Contractor's responsibilities as set out in Clause 30.1 (*Sub-Contract Requirements*) shall apply equally to work carried out by sub-contractors in respect of the requirements of the Contract.
- 30.3 The Contractor shall be fully responsible for the selection, award, administration and performance of all Sub-Contracts.

- 30.4 The Contractor shall ensure that the terms and Clauses of this Contract are reflected in all Sub-Contracts at whatever level, to the extent necessary to enable the Contractor to fully meet its obligations to the Authority under the Contract. The Contractor shall furnish the Authority with a copy of, or relevant extracts from, any such Sub-Contract if so required, unless such information is subject to Confidentially agreements, in which case the information will be amended appropriately prior to submitting to the Authority. This shall not include SSCR information deliverables and scope, unless directed by law.
- 30.5 Any change in a major Sub-Contractor's place(s) of work during the Contract Term shall be notified to the Authority's Commercial Officer, with a copy to the Authority's Project Manager.

31 Sub-Contract Selection

Competitive

- 31.1 The Authority favours competition as the preferred means of supplier selection for its Defence requirements, and wishes to see the greatest application of competition by the Contractor for Sub-Contract activities.
- 31.2 The Authority recognises that the Contractor's longer-term strategic relationships with its suppliers may also provide demonstrable value for money in the supply chain.
- 31.3 It is accepted by both Parties that as a result of consolidation in the Defence industry, the Contractor is and will be faced with fewer sourcing opportunities, where often the choice may be limited either to one of its own business units or to a single unaffiliated company for the supply of sub-systems or components.
- 31.4 The Authority shall upon the request of the Contractor provide reasonable assistance to enable the Contractor to establish Sub-Contractor prices. In addition the Authority shall provide in a timely manner any information, data, drawings available to the Authority at no charge to enable the Contractor to compete non-proprietary elements of work to be performed under the Contract.
- 31.5 Unless already agreed by the Authority before the Contract being let and the information has been set out in Schedule 15 (*Project Delivery*), the Contractor shall separately identify each package of work, service, or purchase of components or raw material, etc. expected to be in excess of £250,000 (ex VAT) for which the Contractor intends to seek competitive tenders and those for which the Contractor does not intend to seek competitive tenders (including work and supplies etc. that it intends to undertake or provide) over the Contract term.
- 31.6 For the avoidance of doubt the information set out at Clause 31.5 (*Sub-Contract Selection*) shall be notified to the Authority's Commercial Officer.

Non-Competitive

- 31.7 Non-competitive Sub-Contracts above £1,000,000 (ex VAT) in value that are not Qualifying Sub-Contracts (see 31.8 below (*Sub-Contract Selection*)) are covered by DEFCON 802 (QDC: Open Book on subcontracts that are not Qualifying Sub-contracts (QSC)).

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- 31.8 The Defence Reform Act (2014) defines Qualifying Sub-Contracts (QSC) as any single source subcontract in excess of £25,000,000, placed in connection with a QDC or another QSC. Responsibility for assessing whether a Sub-Contract is a QSC lies with the party placing the subcontract. The Contractor therefore has an obligation to assess whether any planned subcontract is a QSC. The Contractor must keep a record of any assessments and notify both the Secretary of State for Defence and the subcontractor, when a subcontract is assessed as a QSC.
- 31.9 The Appendix to DEFCON 804 (QDC – Confidentiality of Single Source Contract Regulations Information) provides further provisions to be included in QSCs.

32 Security Aspects

- 32.1 For the purpose of DEFCON 659A (*Security Measures*), the SECRET Matter of the Contract is defined in the Security Aspects Letter (SAL) at Schedule 12 (*Security Aspects Letter*) to the Contract. Changes in these classifications shall be notified by the Authority's Project Manager, to whom enquiries about the SAL should be addressed.
- 32.2 The Contractor shall protect all information relating to the aspects designated as Reportable OFFICIAL and OFFICIAL-SENSITIVE as identified in the SAL, in accordance with DEFCON 660 (*Official-Sensitive Security Requirements*).
- 32.3 The Contractor shall ensure that the requirements and obligations set out under Clause 32.1 and 32.2 (*Security Aspects*) above are flowed down to their Sub-Contractors.
- 32.4 On completion of the Contract, the Contractor shall, as advised by the Authority, return, or destroy all copies of classified documents (including drawings) issued to the Contractor by the Authority and certify that this has been done, unless written approval has been given for retention of specified documents.

33 Transfers And Assignments

Assignment by the Contractor

- 33.1 The Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under the Contract without the prior written consent of the Authority (not to be unreasonably withheld or delayed).
- 33.2 The Authority may give its prior written consent to an assignment or novation by the Contractor. In these circumstances the Authority may require as a Clause of such prior written consent, the provision of a Parent Company Guarantee in the format set out at Schedule 14 – (Specimen Form Of Guarantee Given By A Parent Company In Respect Of A Subsidiary (DEFFORM 24)).

- 33.3 Such guarantee as set out in Clause 33 (*Transfers and Assignment*) shall be from the parent company of the assignee or novatee. Where the parent company is incorporated outside the United Kingdom, a legal opinion on the Parent Company Guarantee Form may be required from an independent legal adviser qualified to practice in the jurisdiction in which such parent company is established and has its head office.

Assignment by the Authority

- 33.4 The Authority may assign, novate or otherwise dispose of any or all of its rights and obligations under the Contract and any associated licences to:

33.4.1 a Contracting Authority; or

33.4.2 any other person with the prior written consent (not to be unreasonably withheld or delayed) of the Contractor.

34 Contractual Authority

- 34.1 Only the Authority's Commercial Officer, their nominated representative or the authorised Commercial Branch is empowered by the Authority to offer or accept on its behalf amendments to the Terms and Clauses of the Contract.
- 34.2 Nothing said, done or written by any person nor anything omitted to be said, done or written by any person, including without limitation any servant or agent of the Crown shall in any way modify, reduce, extinguish (or be a waiver of) any obligation or liability of the Contractor or any right or remedy of the Authority under the Contract or be deemed to amend, add to, delete or amount to a waiver of any term or Clause of the Contract, except as may be expressly stated in writing and signed by the Authority's authorised Commercial representative.
- 34.3 Only the Contractors Commercial Officer, their nominated representative or the authorised Commercial Branch is empowered by the Contractor to offer or accept on its behalf amendments to the Terms and Clauses of the Contract.
- 34.4 Nothing said, done or written by any person nor anything omitted to be said, done or written by any person shall in any way modify, reduce, extinguish (or be a waiver of) any obligation or liability of the Authority or any right or remedy of the Contractor under the Contract or be deemed to amend, add to, delete or amount to a waiver of any term or Clause of the Contract, except as may be expressly stated in writing and signed by the Contractor's authorised Commercial representative

35 Entire Agreement

- 35.1 This Contract constitutes the entire agreement between the Parties with respect to the subject matter of the Contract and supersedes any prior discussions, oral or written agreement with respect to the subject matter of the Contract provided that nothing in this Clause shall exclude liability for fraudulent misrepresentation.

36 Sustainable Procurement

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- 36.1 The Contractor shall take all reasonable steps to procure the observance of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by any servants, employees or agents of the Contractor and any Sub-Contractors engaged in the performance of the Contract.
- 36.2 The Contractor shall take all reasonable steps to ensure that all activities under this Contract shall comply with certified environmental management standards based on ISO 14001:2004.
- 36.3 The Contractor is encouraged to bring to the attention of the Authority any measures which might promote sustainable procurement from a social, economic and environmental point of view.

37 Access to Contractor's Premises

- 37.1 The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- 37.2 As far as reasonably practical, the Contractor shall ensure that the provisions of this Clause 37.1 are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such subcontractors.

38 Contract Tasking

- 38.1 The Authority will authorise technical services work, further to that contract for at Contract Award, as illustrated, but not limited to those referenced, at Schedule 1.2.5 of the Schedule of Requirement, in accordance with Schedule 5 (Tasking Procedure)

39 Liquidated Damages

Redacted under section 43 of the FOIA Commercial Interests

40 Third Party Rights

- 40.1 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.

41 Publicity and Communications with the Media

- 41.1 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.

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42 Contract Change Proposals

- 42.1 The Authority may request a change to the Contract specifications and requirements. Proposed changes may also be initiated by Contractor, but the Contractor shall in all cases prepare the associated Contract Change Proposal Form (CCPF) – Schedule 10 (Change Control Procedure). The CCPF shall include but not be limited to demonstration of the effect of the proposed change on:
- a) Contract Price;
 - b) Payment schedules;
 - c) Delivery schedules;
 - d) Specifications; and
 - e) Performance;
- 42.2 Prior to submitting a CCPF the Contractor shall discuss the proposed change with the Authority's Project Manager to establish the viability of the proposed change and agree allocation of a CCPF reference number. The CCPF shall not be accepted by the Authority without a CCPF reference number.
- 42.3 The Authority's Project Manager will allocate the priority. The priority marking has no contractual status; it merely serves to inform those involved in the Contract Change Proposal procedures.
- 42.4 Where clarification of a Change request is required, it must be given in writing to ensure that there is a clear understanding of the request.
- 42.5 If the proposed Contract change affects the Contract Price, the Contractor shall submit to the Authority in support of such change requests, a Price quotation/proposal which shall as a minimum remain valid for ninety (90) calendar days from the date of submission to the Authority, unless stated within the CCPF, and the quotation must contain, but not be limited to:
- a) a price break down;
 - b) details of all assumptions, exclusions and dependencies, including but not limited to Authority dependencies;
 - c) details of how the change is to be enabled;
 - d) a proposed effective date for the change;
 - e) a payment plan; and
 - f) details of any increase or reduction to the overall Contract Price;
- 42.6 The Authority shall consider the Contractor's quotation/proposal and may seek clarification on an iterative basis. Any changes to the Contractor quotation/proposal are to be clarified in writing.
- 42.7 It shall be the Authority's decision whether to accept or reject any change to the Contract. The Authority shall accept/reject the Contractor's proposal by signing and returning the CCPF to the Contractor within **twenty (20)** Working Days of receipt. Only CCPFs, signed by the Authority's Commercial Officer,

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shall be accepted by the Contractor. Unsigned CCPFs or CCPFs signed by anyone other than the Authority's Commercial Officer shall be returned to the aforesaid. Where the Authority has accepted the Contractor's quotation/proposal, the CCPF shall be accompanied by a formal Contract amendment pursuant to DEFCON 503 (*Formal Amendments to Contract*) and Clause 44 (*Amendments to Contract*). This documentation shall be the Contractor's authority to proceed subject to its unqualified acceptance of the Contract Amendment. For the avoidance of doubt approval to proceed with changes will be given only by the issue of a formal Contract amendment.

42.8 Under no circumstances shall the Contractor proceed with performing work which is the subject of any proposed change request without prior written approval from the Authority pursuant to Clause 42.7 (*Contract Change Proposals*). Accordingly, the Authority will not accept liability for any work done in anticipation of the approval of a change request.

42.9 The Contractor will maintain configuration control of the CCPF and will issue copies to the Authority's Project Manager and Authority's Commercial Officer, on request.

42.10 A copy of the signed and completed CCPF and all its attachments shall be retained by the Contractor, and a copy issued to the Authority's Commercial Officer.

43 Quality Assurance

43.1 The following DEFSTANs and AQAPs shall apply to this Contract and the Contractor shall procure that such DEFSTANs and AQAPs apply to its Sub-Contracts to the extent possible:

- (i) for guidance, informative standard "**AQAP 2070**" (Edition 2) NATO Mutual Government Quality Assurance Process;
- (ii) "**AQAP 2110**" (Edition D, Part 1) NATO Quality Assurance Requirements for Design, Development and Production;
- (iii) "**DEFSTAN 05-61 Part 1**" (Issue 6 31 March 2016) Quality Assurance Procedural Requirements Part 1 Concessions;
- (iv) "**AQAP 2210**" (Edition A (Version 2) September 2015) NATO Supplementary Software Quality Assurance Requirements to AQAP-2110 or AQAP-2310;
- (v) "**DEFSTAN 02-41**" (Issue 4 July 2015) Requirements for Configuration Management of Surface Warships;
- (vi) "**DEFSTAN 05-57**" (Issue 6 March 2014) Configuration Management of Defence Materiel;
- (vii) "**DEFSTAN 05-61 Part 1**" (Issue 6 March 2016) Quality Assurance Procedural Requirements Part 1 Concessions;
- (viii) "**DEFSTAN 05-61 Part 4**" (Issue 3 October 2002, as amended 28 January 2011) Quality Assurance Procedural Requirements Part 4 Contractor Working Parties;

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- (ix) “**DEFSTAN 05-61 Part 9**” (Issue 5 February 2016) Quality Assurance Procedural Requirements Part 9 Independent Inspection Requirements for Safety Critical Items;
- (x) “**DEFSTAN 05-99**” (Issue 4 December 2010, as amended 31 October 2011) Managing Government Furnished Equipment in Industry; and
- (xi) “**DEFSTAN 05-135**” (Issue 2 July 2019) Avoidance of Counterfeit Materiel.
- (xii) **DEFSTAN 05-99**” (Issue 4 October 2011) Managing Government Furnished Equipment in Industry.

43.2 This is not an exhaustive list and other DEFSTANs as called up in this Contract shall also apply.

44 Amendments to Contract

- 44.1 All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority’s Representative (Commercial), and agreed by both Parties.
- 44.2 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, subject to Clause 42 (Contract Change Proposals) and the provisions of DEFCON 620 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 44.1 above has been issued.

45 Single Source Contract Regulations (SSCR)

- 45.1 This Contract has been classed as a Qualifying Defence Contract (QDC) as defined within the Defence Reform Act 2014 (DEFCON 800 (*Qualifying Defence Contract*)).
- 45.2 The attention of the Contractor is drawn to Part 2 of the Defence Reform Act 2014, which is available at <http://www.legislation.gov.uk/ukpga/2014/20/contents/enacted>
- 45.3 The Act and SSCR cover such matters as the information, openness and transparency that the Parties must provide to each other pre-Contract, when negotiating a single source contract, and how the Contract Profit Rate must be negotiated. They also describe the rights and obligations of both Parties to a QDC once on Contract. The Contractor should note that the Act sets out minimum contract reporting and supplier reporting requirements with which the Contractor will have to comply, (and also the Contractor’s ‘ultimate parent undertaking’ where applicable).

Contract Profit Rate

- 45.4 The Contract Profit Rate (CPR) has been calculated as follows using the rate and adjustment guidance published by the Single Source Regulations Office (SSRO).

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SSCR Contract Reporting

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- 45.5 Reports will be required as defined within Schedule 15 (Project Delivery).
- 45.6 The Contractor must submit all Contract reports electronically using a single workbook of Microsoft Excel worksheets. The reporting templates are available as Statutory Guidance issued by the SSRO on their website www.gov.uk/government/organisations/single-source-regulations-office
- 45.7 The Contractor is solely responsible for completion of the reports, although some report content will need to be agreed in advance with the project team. At the time a report is due the Contractor must use the latest version of the template. No deviation or change from the templates can be agreed.
- 45.8 Contract reports will be issued to the Single Source Advisory Team (SSAT) and the Single Source Regulations Office (SSRO). The SSAT will issue the report to the Authority's Commercial Officer once they are satisfied the report is complete and compliant.

46 Contract Price

- 46.1 The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price.

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- 46.2 Prices are inclusive of all appropriate taxes, royalties, license fees and the cost of complying with the Clauses of Contract but exclusive of UK VAT (see DEFCON 513 (*Value Added Tax*)).

- 46.3 Payments stated within the Milestone payment plan (Schedule 6) at Milestone **Redacted under section 43 of the FOIA Commercial Interests**. As a result these elements will not be paid if the incentivised performance targets summarised below are not achieved.

The incentive Milestones **Redacted under section 43 of the FOIA Commercial Interests** shall only be available to the Contractor once satisfactory evidence has been provided to the Authority, demonstrating the completion of the following: **Redacted under FOIA Section 43, Commercial Interests**

47 Variation of Price (VOP)

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47.1 The prices stated in the Schedule of Requirements are **Redacted under FOIA Section 43, Commercial Interests** The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased. Any such variation shall be calculated in accordance with the following formula:

Redacted under FOIA Section 43, Commercial interests



47.2 The Index referred to in Clause 47.1 above shall be taken from the following Tables: **Redacted under FOIA Section 43, Commercial Interests** which can be found on the ONS website; **Redacted under FOIA Section 43, Commercial interests**

- 47.1 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.
- 47.2 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 47.3 above) shall then be applied.
- 47.3 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.

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- 47.4 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.
- 47.5 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.

48 Milestone Payments

- 48.1 The Authority shall, subject to the following provisions of this condition, make to the Contractor advances against the price(s) payable for Contract Deliverables under Statements of Work Schedule 1.2 to the Schedule of Requirements ('Milestone payments') in accordance with the Milestone Payment Plan set out in Schedule 6 of the contract.
- 48.2 The contractor shall be entitled to payments, to be claimed in accordance with DEFCON 522 Payment and Recovery of Sums Dues for each stage under the Milestone Payment Plan, provided that:
- a. the Contractor has completed all work comprised in the Milestone for which the Milestone Payment is sought in accordance with Schedule 6 (Milestone Payment Plan);
 - b. all previous Milestones have been completed, unless the parties expressly agree otherwise; and
 - c. 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.
- 48.3 Notwithstanding Clause 48.2 above, the Authority shall not be obliged to make a payment to the contractor if it has reasonable cause to believe that the contractor will be unlikely to render complete performance of its obligations.
- 48.4 Where the Authority intends to rely on Clause 48.3 above as the basis for rejecting any claim for a payment which the contractor may make, the Authority shall give to the contractor notice in writing of its intention together with reasons and justification for the rejection 10 (ten) days prior to the Milestone date.
- 48.5 The Authority shall without prejudice to any other right / remedy of either party be entitled to recover in full all Milestone payments made under the contract where:
- a. the contract, or the part of the contract under which Contract Deliverables are to be provided, is terminated otherwise than in accordance with DEFCON 656B (Termination for Convenience £5m and Over), or expires by reason of passing of time; and

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b. the Contractor has failed to complete performance of the Contract Deliverables.

48.6 In the event of repayment to the Authority under the provisions of Clause 48.4 above then all that, which vested in the Authority, under the provisions of DEFCON 649 (Vesting) shall re-vest in and become the absolute property of the contractor.

48.7 Payment of a Stage payment by the Authority under this Clause 48 shall not, unless expressly stated to do so, constitute:

- a. acceptance by the Authority of any contractual deliverable;
- b. a representation by the Authority that the Contractor has complied with any contractual obligations; or
- c. a waiver of the Authority's right to subsequently claim that the conditions for payment of that interim payment were not satisfied.

49 Assumptions, Exclusions, Dependencies & Interdependencies

49.1 The assumptions, exclusions, dependencies and interdependencies upon which this Contract is based shall be as listed at Schedule 7 (*Assumptions, Exclusions, Dependencies and Interdependencies*) to this Contract.

49.2 If and to the extent that as a direct result of the occurrence of a Dependency Failure the Contractor is unable to comply with its obligations under this Contract then the Contractor shall be entitled to apply for Relief from those of its obligations as are affected by such Dependency Failure in accordance with this Clause 49 (Assumptions, Exclusions, Dependencies and Interdependencies).

49.3 To obtain relief the Contractor must:

49.3.1 as soon as reasonably practicable and in any event within a maximum of **Redacted under section 43 of the FOIA Commercial Interests** after the Contractor becomes aware that a Dependency Failure has affected or is likely to affect the ability of the Contractor to perform its obligations under this Contract, give the Authority a Dependency Failure Notice which shall contain:

- (a) full details of the nature of the Dependency Failure;
- (b) the date of occurrence of the Dependency Failure;
- (c) the likely duration of the Dependency Failure;
- (d) identification of the cause or likely cause of the Dependency Failure;
- (e) full details of its claim for relief from its obligations under this Contract; and
- (f) its proposals either for remedying or mitigating the effects of the Dependency Failure, which shall include:
 - (i) a full description of any additional works or services;
 - (ii) a timetable for such works and services;
 - (iii) information on who will carry out such works and services; and
 - (iv) full details of the cost of such works or services.

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49.3.2 demonstrate to the reasonable satisfaction of the Authority that shall not be unreasonably withheld:

- (a) the Contractor could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material cost;
- (b) the Dependency Failure directly caused the need for relief from its obligations under this Contract;
- (c) the relief could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material cost;
- (e) the Contractor is using reasonable endeavors to perform the Contractor's obligations under this Contract notwithstanding the occurrence of the Dependency Failure; and
- (f) notify the Authority's Representative if at any time the Contractor receives or becomes aware of any further information relating to the Dependency Failure, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

49.4 The Authority shall confirm whether or not it agrees the information received from the Contractor, in accordance with Clause 49.3 (*Assumptions, Exclusions, Dependencies and Interdependencies*), and the relief claimed. If the Parties cannot agree such information and/or the relief, the Parties shall resolve the matter in accordance with DEFCON 530 (Dispute Resolution).

49.5 If a Dependency Failure Notice is not provided within the timeframe referred to in Clause 49.3 (*Assumptions, Exclusions, Dependencies and Interdependencies*), the Contractor shall not be entitled to any relief in respect of the Dependency Failure concerned until such time as a Dependency Failure Notice complying in all respects with Clause 49.3 has been served on the Authority. In any event, the Contractor shall not be entitled to any relief in respect of a Dependency Failure if it fails to make notification to the Authority within **Redacted under section 43 of the FOIA Commercial Interests** following the Dependency Failure having an impact on the ability of the Contractor to perform its obligations under this Contract. Where the Contractor considers that it was not reasonably able to identify during the **Redacted under section 43 of the FOIA Commercial Interests** period that there has been such an impact, then it shall be entitled to make representations to this effect to the Authority. Acceptance of any claim from the Contractor under this Clause beyond the **Redacted under section 43 of the FOIA Commercial Interests** shall be at the Authority's discretion acting reasonably but the Authority shall have regard to representations made by the Contractor.

49.6 Subject to Clause 49.7 (*Assumptions, Exclusions, Dependencies and Interdependencies*), the Contractor shall be entitled to relief from its obligations under this Contract only in respect of performance of the Contractor's obligations under this Contract arising after the date on which the Dependency Failure occurred.

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- 49.7 Where the Authority believes that the mechanisms contained in this Clause 49 (*Assumptions, Exclusions, Dependencies and Interdependencies*) are not appropriate in the circumstances it may, following receipt of a Dependency Failure Notice, elect to use the change procedure to agree with the Contractor how the consequences of the Dependency Failure should be dealt with, provided that this Clause 49 (*Assumptions, Exclusions, Dependencies and Interdependencies*) shall apply until any such Authority change is agreed with the Contractor or determined pursuant to the change procedure.
- 49.8 The Contractor acknowledges and agrees that any relief and agreed by the Parties in accordance with this Clause 49 (*Assumptions, Exclusions, Dependencies and Interdependencies*) shall be in full and final settlement of any claim for relief from its obligations it has in respect of the Dependency Failure. The occurrence of a Dependency Failure shall not entitle the Contractor to any additional compensation save in the case where the Contractor has not been reasonably able to avoid additional costs, expenses or losses as a consequence of the Dependency Failure in which case it shall be entitled to recovery of the same from the Authority (subject to reasonable supporting information being provided).
- 49.9 The Contractor shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any Dependency Failure other than as set out in this Clause 49 (*Assumptions, Exclusions, Dependencies and Interdependencies*).
- 49.10 Where the Authority, in its absolute discretion, notifies the Contractor that the Authority wishes the Contractor to implement some or all of the proposals identified in the Dependency Failure Notice as set out in Clause 49.3.1(f) (*Assumptions, Exclusions, Dependencies and Interdependencies*), the Contractor shall implement them to the extent required by the Authority.

50 Supply of Drawings, Documents etc. by the Authority

- 50.1 Any drawings and documents supplied to the Contractor by the Authority shall be provided free of charge unless otherwise stated.
- 50.2 The Contractor shall not be responsible or liable for any loss or any failure to meet the requirements of the Contract caused as a result of a lack of integrity, completeness or fitness for purpose of GFI supplied by the Authority to the Contractor except where the Contractor provided the data / information to the Authority under a separate task raised under the Contract.
- 50.3 The Contractor shall promptly notify the Authority of any discrepancy, deficiency, inconsistency or error in the documentation supplied by the Authority under this Contract, which comes to his attention, with the aim of the Authority and the Contractor agreeing an amendment to eliminate any such discrepancy.

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- 50.4 On completion of the Contract, the Authority's Project Manager will advise the Contractor of the method of disposal of all documentary and other information supplied to the Contractor in connection therewith. All documents shall be returned or if authorised by the Authority, destroyed, in accordance with instructions, and certification of such destruction provided. The Contractor shall only retain documentation where such retention has been authorised in writing by the Authority for use by other government contracts (but it is recognised that in the case of information stored on computer networks and which has been backed up by automatic archiving systems, the Contractor shall only be required to take such action as is reasonable and proportionate to remove or render inaccessible the information).

51 Limitations on Liability

Unlimited liabilities

51.1 Neither Party limits its liability for:

- 51.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 51.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 51.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 51.1.4 any liability to the extent it cannot be limited or excluded by law.

51.2 The financial caps on liability set out in Clauses 51.3 and 51.4 below shall not apply to the following:

- 51.2.1 for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property Rights in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
- 51.2.2 breach by the Contractor of DEFCON 532A (Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)); and
- 51.2.3 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
- 51.2.4 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 51.3 and/or 51.4 below.

Financial limits

51.3 Subject to Clauses 51.1 and 51.2 and to the maximum extent permitted by Law:

- 51.3.1 Throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed: in respect of DEFCON 76 **Redacted under FOIA Section 43, Commercial interests**

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in respect of DEFCON 514 Redacted under FOIA Section 43,
Commercial interests
in respect of DEFCON 611 Redacted under FOIA Section 43,
Commercial interests
in respect of DEFCON 612 Redacted under FOIA Section 43,
Commercial interests

51.3.2 without limiting Clause 51.3.1 and subject always to Clauses 51.1 and 51.2, the Contractor's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be Redacted under section 43 of the FOIA Commercial Interests.

51.4 Subject to Clauses 51.1, 51.2 and 51.5, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to Contract Value.

51.5 Clause 51.4 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

51.6 Subject to Clauses 51.1, 51.2 and 51.7, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

51.6.1 indirect loss or damage;

51.6.2 special loss or damage;

51.6.3 consequential loss or damage;

51.6.4 loss of profits (whether direct or indirect);

51.6.5 loss of turnover (whether direct or indirect);

51.6.6 loss of business opportunities (whether direct or indirect); or

51.6.7 damage to goodwill (whether direct or indirect),
even if that Party was aware of the possibility of such loss or damage to the other Party.

Invalidity

51.7 If any limitation or provision contained or expressly referred to in this Condition 51 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 51.

Third party claims or losses

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51.8 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 (Intellectual Property Rights In Software) and DEFCON 632 (Third Party Intellectual Property – Rights and Restrictions) or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

51.8.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

51.8.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

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

52 Delivery / Collection

52.1 Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:

52.1.1 contact the Authority's Representative as detailed in Schedule 9 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;

52.1.2 comply with any special instructions for arranging Delivery in Schedule of Requirements 1.2.4;

52.1.3 be responsible for all costs of Delivery; and

52.1.4 Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 1 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

52.2 Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with Clause 52.1.

53 Acceptance

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- 53.1 Acceptance of the Contractor Deliverables shall occur in accordance with the applicable acceptance procedures specified within Schedule 1 (Schedule of Requirements) and Schedule 4 (Acceptance Management Arrangements).

54 Rejection

- 54.1 If any of the Contractor Deliverables Delivered to the Authority do not conform to the requirements as set out in the SOR or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part) within 20 Business Days from receipt.
- 54.2 Rejection of any of the Contractor Deliverables, shall take place if the Contract Deliverable fails to complete all related acceptance activities under Clause 53 (Acceptance).
- 54.3 If a Contract Deliverable is rejected, the Authority shall notify the Contractor accordingly and provide reasonable details of the nature of the rejection.
- 54.4 Within five (5) Business Days of receipt of a notice of rejection from the Authority under Clause 54.3 (or such other period as the Authority may agree), the Parties shall discuss and agree (in good faith and each acting reasonably) how best to undertake the necessary Remedial Work in respect of the relevant rejection. This shall include a discussion in relation to:
- 54.4.1 whether the Authority (itself, by others or with the support of the Contractor) is best placed to undertake such Remedial Work (within agreed timescales or as part of the Authority's programme of routine and/or planned maintenance) taking into account the Authority's available resources and/or technical experience to do so; and
 - 54.4.2 whether the Contractor (itself or by others) is best placed to undertake such Remedial Work taking into account the prevailing circumstances and any warranties, guarantees or other arrangements it has with its sub-contractors.
- 54.5 Other than where it is agreed pursuant to Clause 54.4 that the Authority shall undertake the Remedial Work, subject to the Authority providing the Contractor with access to the relevant equipment on terms to be agreed between the Parties (each acting reasonably), the Contractor shall execute all Remedial Work required to make the item pass the appropriate Acceptance Management Arrangements within a reasonable period of time and in any event within three (3) months of the rejection being recorded. Such Remedial Work may comprise (as agreed by the Parties) either the repair or replacement of the item to which the rejection relates.

55 Warranty

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56 Intellectual Property Rights (IPR)

- 56.1 The provisions of Schedule 8-A (Intellectual Property Vested in the Contractor) and Schedule 8-B (Intellectual Property Vested in the Authority) provide the assignment of Intellectual Property rights and the application of IP DEFCONs set out in this Contract.

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- 56.2 For the avoidance of doubt, any Technical Services as per Schedule 1.2.5 – Mission Systems – Technical Services of Schedule 1 – Schedule of Requirements, contracted for in accordance with Clause 38 – Contract Tasking, and Schedule 5 – Tasking Procedure, will only be subject to the Contracts IP DEFCONs, and either Schedule 8-A or 8-B of this Contract, that are expressly captured in the Tasking Authorisation Form, Part A

Authorisation by the Crown for use of Third Party Intellectual Property Rights

- 56.3 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.

57 IPR Register

- 57.1 The Contractor shall develop and maintain a register of the Intellectual Property Rights and their restrictions subsisting in the Deliverables (Schedule 20 – DEFFORM 711, which will include details of the ownership of each item and any restrictions on its use. The Contractor shall provide clear evidence to the Authority of the provenance of anything claimed by the Contractor to be Background IP. The Contractor shall maintain such IPR Register for the Term. The IPR Register shall be maintained in media and formats reasonably requested by the Authority and shall be provided to the Authority within 10 Business Days of the Authority making a written request for such provision from time to time.

58 Cyber Risk Assessment

- 58.1 The Contractor shall complete the Cyber Risk Profile found at Schedule 13 (Supplier Assurance Questionnaire). Once completed this is to be provided by e-mail with attachments in Adobe PDF format to both:
- **Redacted under FOIA Section 40, Personal Information**
 - The Authorities Commercial Representative as stated in Schedule 9 (Contract Data Sheet).
- 58.2 Further to DEFCON 658 (Cyber) the Cyber Risk Profile of the Contract is Low, as defined in Def Stan 05-138.

59 Supply of Data for Hazardous Articles, Materials and Substances

- 59.1 The Contractor shall provide to the Authority:
- 59.1.1 for each hazardous material or substance supplied, a Safety Data Sheet (“**SDS**”) in accordance with the Classification, Labelling and Packaging Regulation 1272/2008 (“**CLP**”); and
 - 59.1.2 for each hazardous Article, safety information as required by the Health and Safety at Work, etc. Act 1974 at the time of supply.

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- 59.2 Nothing in this Clause 59 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- 59.3 If the item of supply contains or is a substance falling within the scope of the Registration, Evaluation, Authorisation and restriction of Chemicals (REACH) Regulation (EC) No 1907/2006 (“**REACH**”):
- 59.3.1 the Contractor shall provide to the Authority a SDS for the substance in accordance with REACH. 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 and forward it to the Authority and to the address listed in Clause 59.9; and
 - 59.3.2 the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.
- 59.4 If the Contractor is required, under or in connection with this Contract, to supply Articles or components of Articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, the Contractor shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
- 59.5 The Contractor shall provide to the Authority a completed DEFFORM 68 (Supply of Hazardous Data for Articles, Materials and Substances)
- 59.6 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the CLP and REACH, the Contractor shall comply with hazard reporting requirements of DEFSTAN 07-085 Design Requirements for Weapons and Associated Systems I4, Edition 14 September 2018.
- 59.7 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations 2017 No 1075, the Contractor shall additionally provide details of:
- 59.7.1 the activity; and
 - 59.7.2 the substance (including any isotope).
- 59.8 If the Articles, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- 59.9 Any SDS to be provided in accordance with this Clause 59, including any related information to be supplied in compliance with the Contractor’s statutory duties under Clauses 59.1 and 59.3, any information arising from the provisions of Clauses 59.6, 59.7, and 59.8 and the completed DEFFORM 68 (Supply of Hazardous Data for Articles, Materials and Substances) shall be sent directly to the Authority’s Representative as soon as practicable, and no later than one (1) month prior to the applicable delivery date. In addition, so that the safety information can reach users without delay, a copy shall be sent as an email with attachment(s) in Adobe PDF or MS WORD format to the following email address in Clause 59.9.1:

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- 59.9.1 Emails shall be sent to:
[Redacted under FOIA Section 40, Personal Information]
or such other address as notified by the Authority to the Contractor from time to time.

59.10 Failure by the Contractor to comply with the requirements of this Clause 59 shall be grounds for the Authority rejecting the affected Article(s).

59.11 Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a breach of this Contract, and the Contractor shall promptly notify the Authority of the occurrence thereof and shall remedy any breach of this Clause 59.

59.12 If the Contractor fails to rectify the breach in accordance with Clause 59.11 and within a reasonable period of time, the Authority may terminate this Contract in accordance with DEFCON 514 (*Material Breach*).

60 Project Delivery

- 60.1 Governance, and contract and project reporting requirements shall be undertaken by the Contractor in accordance with Schedule 15 (Project Delivery).

61 Exit Management

- 61.1 During any relevant termination or exit event under the Contract, the Parties shall comply with their respective obligations pursuant to Schedule 19 (*Exit Management Plan*).

62 Change of Law

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62.1 "Change of Law" means any change coming into force and effect after the Contract Effective Date in any:

62.1.1 Legislation;

62.1.2 any applicable judgment of a relevant court of law which changes binding precedent; or

62.1.3 any other Regulations,

in each case provided that compliance with the change is a requirement under Legislation or failure to comply with the change would result in the Contractor being unable to fulfil its obligations under this Contract.

62.2 to the extent that the implementation of the Change of Law has:

62.2.1 directly caused the Contractor to be unable to achieve any obligation of the Contractor under this Contract; or

62.2.2 had a direct cost impact, such Change of Law shall entitles the Contractor to relief in the form of a claim from the Authority for additional cost and/or time

62.3 "Foreseeable Change of Law" means:

62.3.1 any Change of Law coming into force and effect after the Contract Effective Date, where such change has, on or before the Contract Effective Date, been published:

62.3.1.1 in a draft Bill as part of a Government Departmental Consultation Paper;

62.3.1.2 in a Bill;

62.3.1.3 in a draft statutory instrument; and/or

62.3.1.4 as a proposal of the Official Journal of the European Union

62.3.1.5 any Change of Law which occurs on the United Kingdom leaving the European Union pursuant to a notice served on 29 March 2017 under Article 50 of the Treaty on the European Union and which relates to import or export tariffs or duties or other levies or taxes on the import or export of any goods, materials or equipment

62.4 Any and all increased costs or expenditure incurred by, or any delay suffered by, the Contractor as a result of compliance with: (i) any Foreseeable Change of Law shall not result in any entitlement to a Relief Event or to a Change.

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DEFCONS:

DEFCON	Area	Edition
5J	Unique Identifiers	11/16
14	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs	11/22
15	Design Rights and Rights to Use Design Information	06/21
16	Repair and Maintenance Information	06/21
21	Retention of Records	06/21
68	Supply of Hazard Data for Articles, Materials and Substances	10/22
76	Contractor's Personnel At Government Establishments	11/22
90	Copyright	06/21
91	Intellectual Property Rights In Software	06/21
113	Diversion Orders	02/17
117	Supply of Information for NATO Codification Purposes	07/21
129	Packaging (For Articles Other Than Munitions)	02/22
129J	The Use of the Electronic Business Delivery Form	11/16
501	Definitions and Interpretations	10/21
503	Formal Amendments to the Contract	06/22
507	Delivery	07/21
513	Value Added Tax	04/22
514	Material Breach	08/15
515	Bankruptcy and Insolvency	06/21
516	Equality	04/12
518	Transfer	02/17
520	Corrupt Gifts and Payments of Commission	08/21
522	Payment and Recovery of Sums Dues	11/21
524	Rejection	12/21
524A	Counterfeit Materiel	12/22
525	Acceptance	10/98
526	Notices	08/02
527	Waiver	09/97
528	Import and Export Licences	07/21
529	Law (English)	09/97
530	Dispute Resolution (English Law)	12/14
531	Disclosure of Information	09/21
532A	Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)	05/22
534	Subcontracting and Prompt Payment	06/21
537	Rights of Third Parties	12/21
538	Severability	06/02
539	Transparency	01/22
550	Child Labour and Employment Law	02/14
566	Change of Control of Contractor	10/20
602B	Quality Assurance (Without Deliverable Quality Plan)	12/06
604	Progress Reports	06/14

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606	Change and Configuration Control Procedure	07/21
608	Access and Facilities to Be Provided By the Contractor	07/21
609	Contractor's Records	07/21
611	Issued Property	12/22
612	Loss of or Damage to the Articles	06/21
619	Timber and Wood – Derived Products	03/15
620	Contract Change Control Procedure	06/22
621B	Transport (If Contractor Is Responsible For Transport)	10/04
624	Use Of Asbestos	08/22
627	Requirement for a Certificate of Conformity	11/21
632	Third Party Intellectual Property - Rights and Restrictions	11/21
637	Defect Investigation and Liability	05/17
642	Progress Meetings	07/21
644	Marking of Articles	07/18
647	Financial Management Information	05/21
649	Vesting	12/21
656B	Termination for Convenience – £5m and Over	08/16
658	Cyber	10/22
659A	Security Measures	09/21
660	Official-Sensitive Security Requirements	12/15
670	Tax Compliance	02/17
675	Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)	03/21
678	SME Spend Data Collection	09/19
694	Accounting For Property of the Authority	07/21
703	Intellectual Property Rights – Vesting In the Authority	06/21
800	Qualifying Defence Contract	12/14
801	Amendments to Qualifying Defence Contracts – Consolidated versions	12/14
802	QDC: Open Book on subcontracts that are not Qualifying Sub-contracts (QSC)	12/14
804	QDC: Confidentiality of Single Source Contract Regulations Information	03/15

Contract Signature:

Redacted under FOIA Section 40, Personal information

Schedule 1 - Schedule of Requirements

Redacted under FOIA Section 43, Commercial Interests

Schedule 2 - Product Security

Redacted under FOIA Section 43, Commercial Interests

Schedule 3 - Design Management Arrangements

Redacted under FOIA Section 43, Commercial Interests

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Schedule 4 - Acceptance Management Arrangements

Redacted under FOIA Section 43, Commercial Interests

Schedule 5 – Tasking Procedure

Schedule 5 – Tasking Procedure

1. Principles and Scope

- a. The Authority will authorise additional work to that contracted for at Contract Award under Schedule 1.2.5 of Schedule 1 (Schedule of Requirement), in accordance with the Tasking Procedure.
- b. The Authority will raise such tasks using the Task Approval Form (TAF) as detailed at Schedule 5 Annex A, for required tasks against Schedule 1 (Statement of Requirements).
- c. Any discussion that may take place between the Authority and Contractor in connection to any task that has not been approved by signature shall be without prejudice and subject to contract.
- d. The Contractor shall not undertake any work against any Task without the prior written authorisation from the Authority's Contract Representative through Part C of the Task Approval Form. The Authority will not be responsible in any way whatsoever for any work undertaken or costs incurred prior to any Task Approval.
- e. Without prejudice to any other rights or remedies of either party, the Contractor shall have the right to refuse Tasking activities on the grounds of the following: IPR infringement and TAF requests being deemed outside of the scope that of T31 SIF Contract.

2. Submission of a Task Request

- a. The Authority shall complete Part A of the Task Approval Form ("*Task Request*") at Annex A - Schedule 5 (Tasking Procedure) with a unique TAF serial number and shall be used to request service activities raised against Schedule 1 (Schedule of Requirements) and detail the required task, including but not limited to any technical requirements, deliverables, timescales and acceptance criteria.
- b. The Authority shall include alongside their Part A Task Request, a completed Annex A to the TAF (Intellectual Property Rights Form). These shall be used to highlight the relevant DEFCONS relating to the specific Task Request.
- c. The Authority are entitled to withdraw a Task Request at any time, however the Authority will be liable for all reasonable costs incurred by the Contractor in respect to the preparation of the tasking.

3. Request for Information or Discussion of Tasking

- a. On receipt of the Task Request, the Contractor can request for further information or discussion relating to the Task Request.
- b. The Authority shall promptly provide the requested information or engage in the requested discussions. The Authority shall not withhold or delay such request and refuse to provide any further information, in order to assist the Contractor.

4. Submission of Task Proposal

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- a. The Contractor shall complete Part B of the Task Approval Form at Annex A – Schedule 5 (Tasking Procedure), a Breakdown of Price(s) (Annex B to the TAF), details of the work being carried out and provide a response to confirm full understanding of the Requirement, Deliverables and Acceptance criteria.
- b. The Contractor shall ensure that the personnel employed to undertake the Tasks have the appropriate qualifications, competences, training and security requirements to carry out the work to fully meet the requirements detailed in the Task Request.
- c. The Contractor shall provide a price breakdown which includes but not limited to (where relevant), labour and materials cost, overheads, profit, man-hours and T&S, in accordance with Single Source Contract Regulation requirements. Pricing shall use the Firm Rates detailed in Annex B – Tasking Rates - Schedule 5 (Tasking Procedure). The Task Proposal shall be returned by the Contractor within forty (40) Business Days of receipt of the Task Request. If an extension to this period is required the Contractor will submit a written extension request to the Authority no later than 10 days before the time period expiry..
- d. For any Task Proposal submitted, the Authority reserves the right to request for further evidence of any quotation of task. The Contractor shall not unreasonably withhold or delay such request and refuse to provide any requested information, in order to assist the Authority in their assessment.
- e. Upon receipt of the Authority's Intellectual Property Rights Form (Annex D), the Contractor will review said form and provide the Authority with any queries regarding IP contained within the set Task.
- f. Any Task Proposal submitted by the Contractor shall be open for acceptance for a period of no fewer than thirty (30) Business Days.

5. Tasking Approval

- a. The Contractor shall not undertake any work under a TAF without the prior written authorisation of the Authority's Commercial Officer at Part C of the TAF. The Authority will not be responsible in any way whatsoever for any work undertaken or costs incurred prior to receipt by the Contractor of written authorisation in accordance with this Clause 5.
- b. The Authority shall formally notify in writing authorisation of the Task Proposal from the Authority's Contract Representative through Part C of Annex A to Schedule 5 (Task Approval Form).
- c. Subject to receipt of Part C of the Task Approval Form and acceptance of the Task Proposal by the Authority, the Contractor shall proceed with the agreed work accordingly and the task shall become an Authorised Task. A formal Contract Amendment shall be issued in accordance with DEFCON 503 (Formal Amendments to Contract) which will include the addition of the agreed task to Schedule 5 - Annex C (Authorised Task List) and any update to the Contract Price where necessary. Any agreed task working under a Limit of Liability shall require only one Contract Amendment and shall not require subsequent amendments unless the Limit of Liability is required to be increased, at which time the Contract shall be updated.
- d. The Authority shall not unreasonably withhold or delay its agreement to any Task Proposal and reserves the right to reject any Task Proposal and give reasons for its rejection. The Authority shall advise the Contractor of any rejection in writing.

6. Task Management

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- a. The Contractor shall maintain a list of all Authorised Tasks and their progress. The Contractor shall provide this electronically to the Authority on request in accordance with the Condition 60 (Project Delivery).
- b. If any Authorised Tasks are not subsequently required by the Authority and no work has been undertaken by the Contractor, the Contractor shall agree a cancellation of the Task with the Authority at no additional cost. Where work has commenced the Contractor shall immediately cease all work upon notification by the Authority's Commercial Officer and shall as soon as possible thereafter provide a financial statement of the costs incurred to date. When agreed by the Authority, the balance due of the Authorised Task to the Contractor shall become payable. The Authority will raise a formal amendment to the Authorised Task and/or Contract as appropriate in accordance with Condition 44 (Amendments to Contract).
- c. Where the Authority withdraws a Tasking Request in accordance with Clause 2.c. and the Contractor has incurred allowable costs in producing a Task Proposal in accordance with Condition 4, the Contractor shall be entitled to costs reasonably incurred to date and any change to the Contract Price shall be made in accordance with Clause 29 (Authorisation of Contract Amendments) and Clause 42 (Contract Change Proposals).

7. Task Completion

- a. Once an Authorised Task has been completed by the Contractor, the Authority will review the deliverables and if in agreement shall formally notify through the use of Part D of Annex A to Schedule 5. Issuing of a Part D shall indicate acceptance that the task is complete and the Authority will mark the task as complete on Annex C to Schedule 5 (Authorised Task List).
- b. Before any task is marked as complete under Annex C to Schedule 5 (Authorised Task List), the Authority shall ensure all payments are closed in accordance with DEFCON 522 (Payment and Recovery Sums Due).

8. Intellectual Property Rights

- a. The Authority is required to identify the relevant Intellectual Property Rights for each Task Request with its submission of Part A. This will be outlined in the Intellectual Property Rights Form (Annex A to the TAF).
- b. Upon receipt of Part A to Schedule 5 – Annex A - Task Approval Form from the Authority, the Contractor shall review the IP rights listed in Annex A to the TAF.
- c. In accordance with Clause 57.1 (IPR Register), and following the receipt to the Contractor of a signed Part C of a task, an update to the IPR Register will be required to capture items associated to the Task.

Schedule 5 – Annex A - Task Approval Form

This TAF is to be processed in accordance with Clause 38. Contract Tasking of the Contract.

Requestor Name:		Contract No.	
Date Issued:		TAF No.	XXXXXXXXXX
Contractor:		Version:	

PART A – PROPOSAL (MOD)

The Contractor is requested to provide a response to this Part A in Part B below with a return date of XX/XX/XX

Task Title:

Task Description:

Details the scope of requirement

Deliverables:

Acceptance Criteria:

Government Furnished Information and Documents:

Government Furnished Assets:

Required Completion Date: (an assumed start date should also be stated)

Additional Terms and Conditions applied to this Task :

Signature: Name (Block Capitals):

Post: Date:

PART B – RESPONSE BY CONTRACTOR

From: (Name and Company)

Contractor confirms they do/do not understand the requirements, deliverables and Acceptance Criteria and the Authority's requested completion dates. The response below is to provide Contractor's Firm Price to undertake the work above and to clarify any matters worthy of consideration by the Authority.

Firm/Fixed Price to Complete Task:

The total Firm Price for this TAF (EX VAT) is £xxxx, a breakdown is detailed at Annex B.
The total Fixed Price for this TAF (EX VAT) is £xxxx, a breakdown is detailed at Annex B.

The total Price for this TAF (EX VAT) is £xxxx

Note: Price(s) are to be broken down as per Annex B to this Task Authorisation Form

Payment:

Payment of acceptance of the task is agreed.

Completion Date: (confirm agreement to above or start an assumed start and committed end date)

The Required start date xx/xx/xxxx, delivery date of xx/xx/xxxxx and end date of xx/xx/xxxx is agreed.

Scope of Work:

Deliverables:

The list of deliverable(s) detailed above and date(s) required by are agreed.

Commercial Compliance:

The Changes to contractual terms (if any) are agreed.

Signature: Name (Block Capitals):

Post: Date:

Note: No work is to be put in hand until authorised to do so in writing by a Ship Acquisition Commercial Officer (the Authority)

PART C – APPROVAL FOR WORK UNDER TASK TO PROCEED (MOD)				
Project Authorisation: The scope and value of this task is within my Project delegation. The cost at Part B are considered to be fair and reasonable.				
Name:		Signed:		Date:
<u>Finance Concurrence:</u> <u>After Financial and requirements scrutiny of this task, concurrence is given to the costs at part B in accordance with my Financial Delegation.</u>				
Name:		Signed:		Date:
CLAIMS FOR PAYMENT: UIN: VAT Code: RAC: Project Code:				
<u>Commercial Officer:</u> <i>[Name of Contractor]</i> is hereby authorised to proceed with this Task as at Part A above, at the Price and Delivery timescales identified at Part B above of £_____, in accordance with the Terms and Conditions of Contract No. dated xx/xx/xxxx. A Contract Change embodying this Task will be raised in due course.				
RCA: XXXX	RFA: XXXX	Contract No.XXX	RAC: XXX	
Signature: Name (Block Capitals): Post: Date:				
PART D – TASK CLOSURE (To be completed by MOD Project Officer)				
Project Completion confirmation: The above work has been completed to my satisfaction and is hereby accepted:				
Name:		Signed:		Date:

NOTE: Each TAF will be formally incorporated into the Contract through Contract Change Control as and when required.

Annex A to TAF No xxx– Intellectual Property Rights Form**Intellectual Property Rights**

Completion of this section is **mandatory**. Select the appropriate condition(s) by ticking the boxes below after consulting FTS/STS Customer Guidance or with DIPR, if appropriate. In the event that no boxes are ticked in this section (Intellectual Property Rights), all intellectual property generated under the Task shall be subject to the terms of DEFCON 703.

DEFCON	Tick	As Applicable	Tasking Order Line Item (tick as appropriate)
<u>If DEFCON 703 does not apply then select either:</u>			
DEFCON 705 (Edn 11/02)	<input type="checkbox"/>	All <input type="checkbox"/>	<input type="checkbox"/> The following Item Nos. only (insert below)
<u>OR:</u>			
DEFCON 14 (Edn 11/05), 15 (insert edition that applies) 21 (insert edition that applies), 126 (Edn 11/06) & DEFFORM 315	<input type="checkbox"/>	All <input type="checkbox"/>	<input type="checkbox"/> The following Item Nos. only (insert below)
DEFCON 14 (Edn 11/05), 16 (Edn 10/04), 21 (insert edition that applies) & DEFFORM 315	<input type="checkbox"/>	All <input type="checkbox"/>	<input type="checkbox"/> The following Item Nos. only (insert below)
DEFCON 14 (Edn 11/05), 90 (Edn 11/06) & 126 (Edn 11/06)	<input type="checkbox"/>	All <input type="checkbox"/>	<input type="checkbox"/> The following Item Nos. only (insert below)
DEFCON 14 (Edn 11/05), 91 (Edn 11/06) & 126 (Edn 11/06)	<input type="checkbox"/>	All <input type="checkbox"/>	<input type="checkbox"/> The following Item Nos. only (insert below)
Other, as specified in a special IPR condition to be applied to the Tasking Order	<input type="checkbox"/>	All <input type="checkbox"/>	<input type="checkbox"/> The following Item Nos. only (insert below)
No intellectual property conditions apply (refer to DIPR before ticking this box).			<input type="checkbox"/>

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Annex B to TAF No xxx Breakdown of Price(s)

The Contractor must supply a breakdown of costs (ex VAT) to support the price(s) detailed in Part B of this form. Pricing shall be based on the rates detailed in Schedule 5 - Annex B - Tasking Rates.

Item	Resource Description	No Hours	Hourly Rate	Total £
1. Resource				
1.1				
1.2				
total				
Discount				
Total		Cost		Total £
2. Material and Sub-Contracts with Handling Fee				
2.1 (Description of sub-contract)				
Handling fee				
Total				
3. Travel and Subsistence	Activity	Number	Rate	Total £
3.1				
3.2				
3.3				
Total				
TOTAL COST				

Schedule 5 – Annex B – Tasking Rates**Firm Hourly Rates**

Labour Type/Description	Firm Priced			
	Contract Start to XX	XX to XX	XX to XX	XX to XX
Head of Department				
Senior Manager				
Principal Engineer/Manager				
Senior Engineer				
Engineer				
Technical & Admin Assistant				

Firm Travel and Subsistence

Description (suggested categories)	Contract Start to XX	XX to XX	XX to XX	XX to XX
Night Subsistence (per 24hr period – inclusive of accommodation, meals and incidental expenses)				
Day Subsistence (5-10hrs away from the Contractor's site)				
Day Subsistence (more than 10hrs away from Contractor's site)				
Car Hire – Rental (per day)				
Car Hire – Fuel (rate per mile)				
Private car – Fuel (rate per mile)				
Public Transport	At cost	At cost	At cost	At cost

Schedule 5 - Annex C – Authorised Task List**Table 1.1 – Authorised Tasks**

TAF No.	Task Title	Sch. 2 Ref	Date Approved	Value
Total				

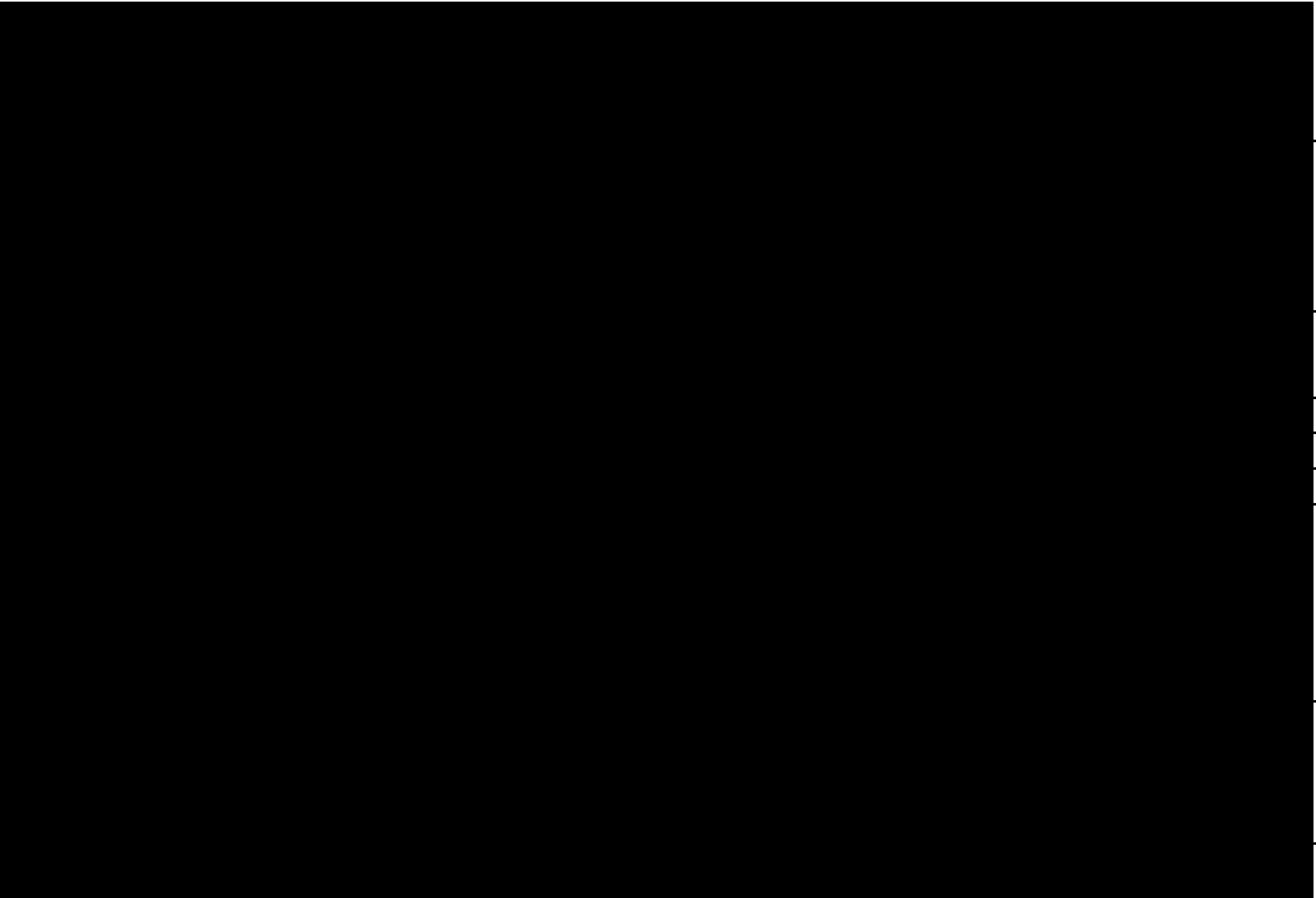
Table 1.2 – Completed Tasks

TAF No.	Task Title	Date Completed	Value
Total			

Schedule 6 – Stage Payment Scheme

Milestone No	Milestone Description	Claim criteria	Milestone Date	%	Value	Currency
1	Redacted under FOIA Section 43, Commercial Interests					GBP
2						GBP
3						GBP

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4		GBP
5		GBP
6		GBP
6a		GBP
7a		GBP
7		GBP
8		GBP
9		GBP
10		GBP

11						GBP
12						GBP
			Milestone Total	100.00%	£69,558,442.37	

Schedule 7 – Assumptions, Exclusions and Dependencies

Redacted under FOIA Section 43, Commercial Interests

Schedule 8A - Intellectual Property Vested in the Contractor

Redacted under FOIA Section 43, Commercial Interests

Schedule 8B - Intellectual Property Vested in the Authority

Redacted under FOIA Section 43, Commercial Interests

Schedule 9 – Contract Data Sheet & Annex A (to Schedule 9) - Appendix - Addresses and Other Information DEFFORM 111

Schedule 9 – Contract Data Sheet

General Conditions
Duration of Contract: The Contract start date shall be: Contract Effective Date The Contract expiry date shall be: 31 March 2026
Authority's Representatives: The Authority's Representatives for the Contract are as follows: Commercial: Redacted under FOIA Section 40, Personal Information Project Manager: Redacted under FOIA Section 40, Personal Information
Notices: Notices served under the Contract shall be sent to the following address: Authority: #3016 Ash 0c, MOD Abbey Wood, BRISTOL, BS34 8JH (as per DEFFORM 111) Notices can be sent by electronic mail
Other Addresses and Other Information <i>(forms and publications addresses and official use information)</i>
See Annex A to Schedule 9 (DEFFORM 111).

Schedule 9 Annex A - Appendix - Addresses and Other Information

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1. Commercial Officer

Name: Redacted under FOIA Section 40, Personal Information

Address: #3016 Ash 0c, MOD Abbey Wood, Bristol, BS34 8JH

Email: Redacted under FOIA Section 40, Personal Information

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

Name: Redacted under FOIA Section 40, Personal Information

Address: #3016 Ash 0c, MOD Abbey Wood, Bristol, BS34 8JH

Email: Redacted under FOIA Section 40, Personal Information

3. Packaging Design Authority Organisation & point of contact:

Name:

Address: #3016 Ash 0c, MOD Abbey Wood, Bristol, BS34 8JH

Email:

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

Please contact the Project Team in Section 2

5. Drawings/Specifications are available from

6. Intentionally Blank

7. Quality Assurance Representative:

Name: Redacted under FOIA Section 40, Personal Information

Address: #3016 Ash 0c, MOD Abbey Wood, Bristol, BS34 8JH

Email: Redacted under FOIA Section 40, Personal Information

AQAPS and DEF STANS are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.dif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394

9. Consignment Instructions The items are to be consigned in accordance with the Contract.

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

A. DSCOM. DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact DESWATERGUARD-ICS-Support@mod.gov.uk in the first instance.

11. The Invoice Paying Authority

Ministry of Defence, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

☎ 0151-242-2000 Fax: 0151-242-2809

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Website is: <https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site, Lower Amcott, Bicester, OX25 1LP
(Tel. 01869 256197 Fax: 01869 256824)

Applications via fax or email: Leidos-FormsPublications@teamleidos.mod.uk

*** NOTE**

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

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

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

Schedule 10 – Change Control Procedure

Schedule 10 – Change Control Procedure

CHANGE NO

ISSUE NO

DATE

CONTRACT/ORDER NO

PART A - PROPOSAL (to be completed by either Party)

1. Proposed Change title:

2. Proposed Change objective and description:

3. Commencement date:

4. Completion Date:

5. Other information:

6. Acceptance criteria:
[None/Please specify]

Date

(Signed).....

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PART B - PRICE (To be completed by the Contractor)

1. Firm Price: £
2. Brief details of any significant items required to be purchased to complete the Change:
3. Timescale/Completion Date:
4. Comments, Exclusions or Dependencies:
5. Extension of Time Required by Change:

Date

Signed)..... For the Contractor/the Authority (*delete as appropriate*)

PART C - APPROVAL (To be completed by the Authority)

Approval is given for the Change proposed above for the Firm Price of £..... and subject to the details provided in Part A and Part B hereof.

Date.....

(Signed)..... For the Authority

PART D - ACHIEVEMENT CERTIFICATION (To be completed by the Authority)

It is acknowledged that the works executed in pursuance of this Change have been completed, in accordance with the requirements of Authority.

Date

(Signed) For the Authority

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Schedule 11 - Specimen Commercial Exploitation Levy Agreements

Schedule 11 – Specimen Commercial Exploitation Levy

Specimen Agreement Where Percentage Levy Rates Apply

Ministry of Defence

Commercial Exploitation of Defence Equipment Developed at Government Expense

[CEL Agreement No.]*

Interpretation etc.

1. In this Agreement the following shall have the effect with respect to interpretation:
 - a. 'the Contract(s)' mean(s) Contract No(s)..... between the Ministry and the Contractor relating to/for ;
 - b. 'Contract Article' means any article which uses the design produced under the Contract(s) and includes any sub-assemblies, components or spares thereof;
 - c. 'Government-funded tooling' means jigs and tools, etc, provided or paid for by the Ministry and required for the production of a Contract Article;
 - d. the 'Contractor' includes any subsidiary or associated company of the Contractor;
 - e. 'leviable transaction' means a sale or any other transaction giving rise to levy under this Agreement;
 - f. the 'Contractor's selling price' means, subject to the proviso hereto, the price for which the Contractor invoices his customer but excluding the cost of such of the following elements as are applicable and can be identified to the satisfaction of the Ministry:
 - (1) Freight costs and insurance.
 - (2) Cost of packing not developed at UK Government expense.
 - (3) The cost of ECGD servicing and other sales finance charges including interest on customer credit.
 - (4) The cost of any MOD inspection.
 - (5) Installation and commissioning costs where installation and commissioning form no part of the work under the development contract(s).
 - (6) Agents' fees and commission.
 - (7) The price paid by the Contractor for an article or articles supplied to him by a third party for incorporation in the Contract Article, but only if such

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third party has a separate commercial exploitation agreement with the Ministry relating to such article or articles and has been informed by the Contractor that such article or articles are being used for a leviable transaction.

(8) Value Added Tax where applicable.

Provided that any element of profit which the contractor has included in the above items (1) - (8) shall not be so included.

- g. 'Profit' other than for the purposes of the proviso to sub-clause (f) of this Clause means the difference between the Contractor's selling price and the allowable costs prescribed by the Ministry for the purpose of the sale in question, provided such difference is a positive sum.

Sales and Licences

2. Should the Contractor sell any Contract Article, other than for any purpose set out in Clauses 5 and 6 hereof, the Contractor shall pay to the Ministry:
- a. a levy for the use of the design to be calculated at per cent of the Contractor's selling price [except that the percentage rate of levy may be revised at the end of the development contract if the Contractor or the Ministry can demonstrate that the design relied more, or less, on private venture research and development than was assumed in agreeing the levy rate]*.
 - b. a levy of 2.5 per cent of the Contractor's selling price for the use of Government-funded tooling except that the rate of 2.5 per cent shall be reduced appropriately where a substantial part of jigs and tools etc used in connection with a sale or other transaction has not been provided or paid for by the Ministry:

except that, unless otherwise agreed by the Ministry, levy on individual sales above £15M in value (for which purpose contemporaneous sales of the same equipment to the same customer will count as one sale) will be payable on an appropriate profit-sharing basis to be agreed between the Contractor and the Ministry before the contract of sale is entered into. The threshold of £15M may be increased from time to time by the Ministry, in relation to future sales, to take account of inflation.

3. Should the Contractor grant a licence to manufacture Contract Articles, the Contractor shall pay to the Ministry a levy calculated at 33.3 per cent of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof:

Provided that:

- a. where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing 33.3 per cent of what may reasonably be regarded as the value of the said benefit; and
- b. the Contractor shall not grant any licence for which there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy if any should reasonably be paid to the Ministry in respect of such licence; and
- c. where the licensee pays for parts supplied in addition to paying his licence fee for manufacturing Contract Articles, levy on such parts shall be due in

accordance with Clause 2 above in addition to the rate due under this clause. The receipts by the Contractor in respect of such parts shall not be regarded as receipts in respect of the licence on which the levy of 33.3 per cent is charged.

4. Payment of levy is deemed to include payment for the use of any industrial property rights owned by the Ministry in connection with a sale or other transaction giving rise to levy under this Agreement.
5. No levy shall be payable in respect of:
 - a. purchases by the Ministry;
 - b. sales to another UK Government Contractor or sub-contractor when the Contract Articles concerned can be clearly identified as being supplied to meet the requirements of the Ministry;
 - c. substantial individual equipments not developed at UK Government expense.
6. In the case of sales to the Government of Australia, whether directly or under a sub-contract, of Contract Articles which are Guided Weapons or other items which have been developed with the aid of the Joint Project facilities at the Weapons Research Establishment, Woomera, and of spares for elements of such systems, the levy shall be restricted to a charge for the use of Government-funded tooling in accordance with Clause 2(b).

Sales of or Licensing of Spares or Parts

7. The sale of or licence to manufacture spares or parts of Contract Articles shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for any elements of the design of any such spare or part that were not developed at UK Government expense or a reduced rate of levy shall apply on all such spares and parts where there are practical difficulties in distinguishing between those which attract the full rate of levy, those which attract a reduced rate of levy and those on which no levy is due.

Derivatives

8. Should the Contractor sell, refurbish, recondition, maintain, lend, hire, or grant a licence to manufacture any articles in any further stage of development or articles based on the design of, or using design features of, or being a scaled version of, the Contract Article, levy calculated in accordance with this Agreement shall be due to the Ministry only to such extent as shall be reasonable in the circumstances. Subject to this the provisions of this Agreement shall apply.

Refurbishing or Reconditioning

9. Should the Contractor for resale or otherwise refurbish or recondition any Contract Articles (except at no charge to the customer under defects liability obligations) the Contractor shall pay to the Ministry a levy consisting of:
 - a. a sum calculated in accordance with this Agreement on the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles; and

- b. a sum for any use of Government-funded tooling (other than any used only in the manufacture of the said new sub-assemblies, components and spare parts) calculated as in Clause 2(b) on the Contractor's selling price of the said reconditioned or refurbished Contract Articles after deduction of the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles.

Maintenance Agreements

- 10. Where an agreement for the maintenance of Contract Articles between the Contractor and another party for a fee includes the provision of parts and spares of such Contract Articles not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable estimate for the provision of such parts and spares.

Loan or Hire of Contract Articles

- 11. Should the Contractor enter into any Agreement for lending any Contract Articles or for otherwise making such Articles available to a third party except by way of sale, the Contractor shall pay to the Ministry a levy calculated as specified under Clause 2 hereof of the gross receipts of the Contractor.

Provided that:

- a. where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payment (as the case may be), consist of or include a sum calculated in accordance with Clause 2 hereof and based on what may be reasonably regarded as the value of the said benefit; and
 - b. the Contractor shall not enter into any Agreement (as set out in this clause) for which there is no consideration, or only nominal consideration, unless the Ministry has agreed what levy, if any, should reasonably be paid to the Ministry in respect of such Agreement.
- 12. Unless the Contract Article is subsequently sold, no levy shall be due where the Contractor makes a Contract Article solely for his own research or development purposes or for his own demonstration or sales promotion purposes, except in respect of use of Government-funded tooling. Contract Articles made and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clause 2.

Abatement of Levy

- 13. Where, in the circumstances of an individual sale, the Contractor considers that the effect upon his selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice his chances of completing the sale, or would result in an unreasonably low profit, it shall be open to the Contractor before the sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 14 and 15 herein. Provided that the Contractor's cost accounting system is adequate in the opinion of the Ministry to provide the statements of allowable costs necessary to implement the scheme such approval will not be unreasonably withheld.

14. The abatement scheme shall generally determine levy on the basis of outturn profitability of the sale in question expressed as a percentage on the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:
- a. where Government-funded tooling is used, the first half percent of profit on cost shall be payable to the Ministry;
 - b. the next 5% of profit on cost (or the initial 5% where sub-clause 14(a) does not apply) shall be retained by the Contractor;
 - c. the remaining profit, without upper limit, shall be shared between the Ministry and the Contractor in the ratio of 1:1 until a total profit of 25% on cost has been reached, and thereafter in the ratio of X:1.

Note: X should be one-fifth of the total normal unabated levy rates, but never less than 1).

15. Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revoked by either party for the sale in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it so desires, to verify the statements. Where the value of the sale is less than £500,000 any abatement of levy may at the discretion of the Ministry, be settled (before the sale contract entered into is concluded) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry.

Notification of Leviable Transactions

16. The Contractor shall notify details including, where appropriate, the expected value of the sale, to the Ministry acquisition team named in the Contract quoting the number of the Contract / CEL Agreement No.:
- a. in respect of a sale of any Contract Articles or of a development or derivation thereof:
 - (1) as soon as it becomes apparent that a sale (or contemporaneous sales of the same equipment to the same customer) above £15M in value (or such higher value as may be notified by the Ministry from time to time) may arise;
 - (2) immediately a first sale of lesser value is entered into;
 - b. immediately any negotiations for the grant of a licence for the manufacture of any Contract Articles, or of a development or derivation thereof, is entered into (the Ministry reserves the right in this connection to be supplied with a copy of the terms of the licence agreement); or
 - c. in respect of any leviable transaction other than a sale or licence relating to any Contract Articles, or to a development or derivation thereof:
 - (1) immediately the transaction is entered into where the rate of levy is laid down in this Agreement;

- (2) immediately negotiations are entered into where the appropriate rate of levy has not been agreed;
- d. when any proposed extension or alteration to the transactions set out in (a) (1), (b) or (c) (2) is considered.

Cancelled Orders

- 17. Where a sale is cancelled after some work in aid of the sale involving the use of Government-funded tooling has been undertaken, a levy shall be due in respect of such use calculated on a fair and reasonable basis. Where the Contractor has received any payments, whether from his customer or otherwise which he is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to the Ministry acquisition team named in the Contract and shall provide such information as may reasonably be required for the determination of the levies payable under this Clause. Should any Contract Article (or article falling under Clause 8) manufactured or in course of manufacture prior to cancellation subsequently be re-sold levy will again be due on the normal basis.
- 18. The liability of the Contractor to the Ministry for any sum due under this Agreement shall accrue:
 - a. in respect of sales, on the date of delivery ex-Contractor's works or, where the sale contract so prescribes, upon shipment;
 - b. in respect of cancelled sales, six months after the date of cancellation or such longer period as may be agreed;
 - c. annex
 - d. in respect of the use of Government-funded tooling where no other liability for levy arises, upon completion of the work in question, except that if the work takes longer than a year interim payments of levy will accrue as deliveries take place. In the event of cancellation of the sale liability will accrue six months thereafter;
 - e. in respect of any Variation of Price settlements on receipt of payment by the Contractor.

Payment of levy shall be in accordance with the Accounting provisions at Clauses 21-24 below.

- 19. Where an abatement scheme has been approved in accordance with Clauses 13-15 the Contractor shall be liable for interim payment of levy in accordance with the provisions of Clause 18 at one half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.
- 20. Should the Contractor fail to provide statements under Clause 22 within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.

Accounting

21. The Contractor shall supply to DFM-FMSSC-IR-IP1-12F, 1st Floor, Walker House, Exchange Flags, Liverpool L2 3YL, two copies of a statement (see clause 22) at intervals commencing with first sale or licensing arrangements (see Clause 16).
22. The statement shall contain information concerning every sale, licence or other transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:
 - a. the nature of the transaction (making clear under which of the Clauses 2-12 hereof it falls) and the date thereof and the name and address of the other party or parties thereto;
 - b. in the case of a sale, the quantity and type of equipment sold, the selling price, and in any other case, the gross receipts in money in respect thereof and the nature and value of any consideration other than money;
 - c. any other matters relevant to determining the levy payable;
 - d. the sum (to the nearest pound) computer to be payable by the Contractor to the Ministry in respect of each transactions (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).
23. The statement shall be provided not later than two months after the close of the period to which it relates once a first sale or licensing has been agreed and 'nil' statements shall thereafter be provided whenever appropriate. Where there are NIL returns over a number of years and no evident prospect of a future leviable activity or receipt the contractor should approach the Ministry acquisition team commercial officer regarding future reporting and future CEL arrangements.
24. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by DFM-FMSSC-IR-IP1-12F, Ministry of Defence. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.
25. Two copies of an annual certificate that the sums reported on the statements are correct and complete and in accordance with the Contractor's books of account and records or that no sales have been made or licences granted or other leviable transactions entered into, shall be obtained by the Contractor from his Auditors and shall be forwarded to DFM-FMSSC-IR-IP1-12F not later than six months after the end of the Contractor's financial year.
26. For the purpose of verifying the statements the Contractor shall maintain proper books of account and records at his premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office.

Recovery of Sums Due

27. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Ministry or with any Department or Office of Her Majesty's Government.

Arbitration etc

28. This Agreement shall be considered as an agreement made in England** and subject to English Law**.
29. All disputes, differences or questions between the parties to this Agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Contractor) or their Umpire, in accordance with the provisions of the Arbitration Act 1996.**

(** Amend as necessary should Scots Law apply - the revision should be modelled on DEFCONS 529A and 530A, omitting from the latter references to other conditions and matters on which MOD's decision is final.)

30. Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:
- a. obtaining the necessary export licence as applicable to any overseas sale;
 - b. obtaining any necessary release from security restrictions in force for the Contract Articles.
31. Contractors are advised to consult the Defence Export Services Organisation, St Georges Court, 2-12 Bloomsbury Way, London WC1A 2SH, on a case by case basis before making offers to sell Contract Articles overseas.

Signed:
(MOD Commercial)

Signed:
(Contractor)

Date:

Date

* Delete words in parentheses as appropriate

Specimen Agreement for Software Where Percentage Levy Rates Apply
Commercial Exploitation of Computer Software Developed at Government Expense

[CEL Agreement No.]*

This AGREEMENT is made the day of two thousand and
BETWEEN THE SECRETARY OF STATE FOR DEFENCE (hereinafter called 'the Ministry') of
the one part andwhose
registered office is situated at
..... (hereinafter called 'the Contractor' which expression where the context
so admits or requires shall include its successors in title) of the other part.

WHEREAS:

- (1) By virtue of conditions of (a) Contract(s) between the Contractor and the Ministry the Contractor has developed certain Computer Software for the Ministry and is the beneficial owner of all Intellectual Property Rights therein;
- (2) By virtue of the conditions of said Contract(s) the Contractor is permitted to commercially exploit said Computer Software provided that he first agrees with the Ministry the sum or sums which should reasonably be paid to the Ministry having regard to the amount paid or payable to the Contractor by the Ministry under the Contract(s) and other relevant Contracts.
- (3) The parties hereto have agreed that the aforementioned sum or sums payable and the conditions governing payment thereof shall be as set forth in the following Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

Definitions

1. In this Agreement the following terms shall have the following meanings:
 - (a) 'The Contract(s)' means Contract Number(s) between the Ministry and the Contractor for the
 - (b) 'Contract(s) Software' means the computer program or part thereof generated under the Contract(s) and including any adaptation, extraction, translation, modification or enhancement thereof and any associated documentation such as program user guides.
 - (c) the 'Contractor' includes any subsidiary company or associated company of the Contractor.
 - (d) 'Sale' means any sale transaction, lease or hire of, or the grant of an end-user licence in respect of, the Contract(s) Software in whole or in part by the Contractor, and derived terms such as 'selling' shall be construed accordingly.
 - (e) 'Bureau Services' - means a service whereby the benefit of the Contract(s) Software is provided to a customer for gain, without transfer of the Contract(s) Software to the customer.

- (f) 'Leviable Transaction' means any transaction giving rise to levy under this agreement, and shall include a transaction for the supply of the Contract(s) Software and the grant of licences and shall also include a transaction for Bureau Services.
- (g) The 'Contractor's selling price' means the price for which the Contractor invoices his customer before the deduction of any discounts but excluding such of the following elements as are applicable and can be identified to the satisfaction of the Ministry;
 - (i) Freight costs and insurance;
 - (ii) Packaging not developed at UKG expense;
 - (iii) The cost of ECGD servicing and other sales finance charges;
 - (iv) Any charges relating to MOD inspection;
 - (v) Installation and commissioning costs incurred where installation and commissioning formed no part of the work under the Contract(s) but excluding the cost of providing any warranty;
 - (vi) Agent's fees and commissions;
 - (vii) Value Added Tax where applicable.

Provided that any element of Profit which the Contractor has included in the above items (i) to (vii) shall not be so included.
- h) 'Profit' other than for the purposes of the above proviso to sub-clause (g) above means the difference between the Contractor's selling price and the allowable costs as prescribed by the Ministry for the purpose of the Sale in question provided such difference is a positive sum.

Sales and Licences

- 2. Should the Contractor sell any Contract(s) Software or any material reproducing the Contract(s) Software other than for any purpose set out in Clause 8 hereof the Contractor shall pay to the Ministry:
 - (a) A levy for the use of the Intellectual Property Rights enshrined in the Contract(s) Software including copyright to be calculated at% of the Contractor's selling price.
 - (b) A share of the profits on any Leviable Transaction for which the Contractor's gross receipts exceed £15M in value (for which purpose contemporaneous Leviable Transactions of the same Contract(s) Software to the same customer will count as one Leviable Transaction, said share to be agreed between the Contractor and Ministry before the transaction contract is entered into. The threshold of £15M may be increased from time to time by the Ministry, in relation to future transactions to take into account inflation.
- 3. Should the Contractor grant a licence to reproduce the Contract(s) Software and to enable the Licensee to sell the Contract Software(s) or should the Contractor assign or otherwise dispose of his rights in the Contract(s) Software, the Contractor shall pay the

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Ministry a levy calculated at% of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof.

Provided that:

- (a) The Contractor shall not assign or grant an exclusive licence or otherwise dispose of his rights in the Contract(s) Software without the prior written consent of the Ministry, which consent shall not be unreasonably withheld. It will be a condition of consent that the terms of the said assignment or said exclusive licence or disposition shall be consistent with the terms and conditions of this Agreement and that before entering into an Agreement to assign or grant an exclusive licence or otherwise dispose of his rights in the Contract(s) Software the Contractor shall ensure that the proposed assignee or the proposed exclusive licensee enters into an agreement with the Ministry reserving to the Ministry the rights granted to it in the Contract(s);
 - (b) Where the consideration comprises wholly or in part some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing% of what may be reasonably regarded as the value of the said benefit; and
 - (c) The Contractor shall not grant any licence or make an assignment or otherwise dispose of his rights in the Contract(s) Software where there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy (if any) should reasonably be paid to the Ministry in respect of such licence assignment or disposition of rights.
- 4. If the Contractor uses the Contract(s) Software to develop other computer software, and the Contractor wishes to enter into a Sale involving the computer software as developed, then the Contractor shall notify the Ministry prior to the said Sale, and the levy due upon the said Sale shall be agreed upon between the Ministry and the Contractor.
 - 5. The Contractor shall not place in the public domain or disclose to a third party the Contract(s) Software nor any computer software developed by use of the Contract(s) Software without first notifying the Ministry and agreeing with the Ministry the amount of levy that shall be payable in respect of such placement or disclosure.
 - 6. Where an agreement for the maintenance of the Contract(s) Software between the Contractor and another party for a fee also includes the supply of the Contract(s) Software not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable price for the Supply of the Contract(s) Software.
 - 7. Subject to Clause 8 below payment of levy is deemed to include payment for the use of any Intellectual Property Rights owned by the Ministry (or in the case of copyright, administered for commercial exploitation by the Ministry) which is in the Contractor's possession and is necessary in connection with the Sale or other transaction giving rise to levy under this Agreement.
 - 8. This Agreement does not provide a right to use or include payment for the use of any Intellectual Property Rights (or in the case of copyright, administered for commercial

exploitation by the Ministry) which are administered and managed on behalf of the Ministry by the Meteorological Office.

9. It shall be the sole responsibility of the Contractor to ensure that he has secured adequate rights from any third party to use and exploit elements of the Contract(s) Software in which the Intellectual Property Rights are owned by such third party.
10. No levy shall be payable in respect of;
 - (a) the supply of the Contract(s) Software to the Ministry;
 - (b) the supply of the Contract(s) Software under any transactions with the Ministry's Agents or its contractor or sub-contractor where the Contract(s) Software can be clearly identified as being supplied to meet the requirements of the Ministry.

Sales or Licensing of Adaptations, Extraction's, Translations, or Enhancements of the Contract(s) Software.

11. Sales involving, or licences to reproduce, adaptations, extraction's, translations or enhancements of the Contract(s) Software shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for software that was not developed at UK Government expense.

Contract Software for Contractor's Own Use.

12. Without prejudice to Clause 3 above unless the Contract(s) Software is subsequently sold, no levy shall be due where the Contractor reproduces the Contract(s) Software solely for his own research or development purposes or for his own demonstration or sales promotion purposes. Contract(s) Software reproduced and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clauses 2 to 6 hereof.

Abatement of Levy

13. Where, in the circumstances of an individual Sale, the Contractor considers that the effect upon his selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice his chances of completing the Sale or would result in an unreasonably low profit, it shall be open to the Contractor before the Sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 15 and 16 herein. Provided that the Contractor's Cost Accounting System is adequate in the opinion of the Ministry to provide the statements for allowable costs necessary to implement the scheme such approval shall not be unreasonably withheld.
14. The abatement scheme shall generally determine levy on the basis of outturn profitability of the Sale in question expressed as a percentage of the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:
 - (a) The first 5% of profit on cost shall be retained by the Contractor.
 - (b) The remaining profit, without upper limit, shall be shared between the Ministry and the Contractor in the ratio of 1:1 until a total profit of 25% on cost has been reached, and thereafter in a ratio to be agreed between the Ministry and the Contractor.

15. Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revised by either party for the Sale in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it is so desired, to verify the statement. Where the value of the sale is less than £500,000 any abatement levy may at the discretion of the Ministry be settled (before the Sale Contract is entered into) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry.
16. Where an abatement scheme has been approved in accordance with Clauses 13 to 15 of this Agreement the Contractor shall be liable for an interim payment of levy in accordance with the provisions of Clause 20 of this Agreement at one-half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the Sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.

Cancelled Orders

17. Where a Sale is cancelled and the Contractor has received any payments, whether from his customer or otherwise, which he is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to the Ministry acquisition team named in the Contract and shall provide such information as may be necessary or reasonably required for the determination of the levies payable under this clause. If a sale is entered into which involves any Contract(s) Software or any adaptation, extraction, translation or enhancement thereof which was involved in the said cancelled Sale levy will again be due on the above-mentioned basis.

Accounting

18. The liability of the contractor to the Ministry for any sum due under this Agreement shall accrue:
 - (a) in respect of sales on the date of delivery.
 - (b) in respect of cancelled Sales, six months after the date of termination or such longer period as may be agreed between the Contractor and the Ministry.
 - (c) in the case of licences, assignment or other disposition of rights in the Contract(s) Software on the date of receipt by the Contractor of each payment.
19. The Contractor shall prepare statements which contain information concerning every Sale, licence, assignment or disposition of rights or other Leviable Transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:
 - (a) The nature of the Leviable Transaction (making clear under which of the Clauses 2 to 12 hereof it falls), and the date thereof and the name and address of the other party or parties thereto;

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- (b) In the case of a Sale the number of copies of the Contract(s) Software sold, the selling price and in any other case, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof.
 - (c) In the case of any other Leviable Transaction, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof.
 - (d) Any other matters relevant to determining the levy payable;
 - (e) The sum (to the nearest pound) computed to be payable by the Contractor to the Ministry in respect of each transaction (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).
20. The Contractor shall supply to DFM-FMSSC-IR-IP1-12F, 1st Floor, Walker House, Exchange Flags, Liverpool L2 3YL two copies of the Statement at six monthly intervals commencing with the first Sale or licensing, assignment or disposition of rights arrangements.
21. The statement shall be provided not later than two months after the close of the period to which it relates and 'nil' statements shall thereafter be provided whenever appropriate. Where there are 'nil' returns over a number of years and no evident prospect of a future leviable activity or receipt the Contractor should approach the Ministry acquisition team commercial officer regarding future reporting arrangements.
22. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by DFM-FMSSC-IR-IP1-12F, Ministry of Defence. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.
23. Should the Contractor fail to provide Statements within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.
24. Two copies of an annual certificate that the sum reported on the Statements are correct and complete in accordance with the Contractor's books of account and records, or that no Sale has been made or licence assignment or disposition of rights in the Contract Software granted or other Leviable Transactions entered into, shall be obtained by the Contractor from his auditor and shall be forwarded to DFM-FMSSC-IR-IP1-12F not later than six months after the end of the Contractor's financial year.
25. The Contractor shall maintain proper books of accounting records at his premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office for the purpose of verifying that the terms and conditions of this Agreement are being complied with.
26. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Ministry or with any Department of Her Majesty's Government.

27. The Contractor shall notify the Ministry acquisition team named in the Contract(s), quoting the number of the Contract, of details of all transactions involving the Contract(s) Software as set out in (a), (b) and (c) below:
- (a) Immediately it becomes apparent to the Contractor that a Sale (or contemporaneous Sale of the same software to the same Contractor) which is of value above £15M (or such higher value as may be notified by the Ministry from time to time) to the Contractor may arise, and the Contractor shall notify the said Ministry acquisition team of the estimated value.
 - (b) In the event of negotiations for the grant of a licence, assignment or other disposition of rights relating to the Contract(s) Software, immediately a draft licence, assignment or other such document pertaining to the said disposition has been prepared, and shall supply a copy of the said document to the Ministry acquisition team.
 - (c) Immediately it becomes apparent to the Contractor that any change in the situations referred to in sub-clause (a) and (b) of this clause is likely to occur.

Export Licence

28. Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:
- (a) obtaining the necessary export licences as applicable to any overseas sale;
 - or
 - (b) obtaining any necessary release for security restrictions in force for the Contract(s) Software.
29. The Contractor is advised to consult the Defence Export Services Organisation St Georges Court, 2-12 Bloomsbury Way, London WC1A 2SH, on a case by case basis, before making offers to sell or licence the Contract(s) Software overseas.

Arbitration

30. All disputes, differences or questions between the parties to this agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Contractor) or their Umpire, in accordance with the Arbitration Act 1996**.

Law

31. This Agreement shall be construed as a contract made in England** and shall be subject to English Law**.

(** Amend as necessary should Scots Law apply - the revision should be modelled on DEFCONs 529A and 530A, omitting from the latter references to other conditions and matters on which MOD's decision is final.)

Signed:

(MOD Contracts)

Date:

Signed:

(Contractor)

Date:

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** Delete words in parentheses as appropriate*

Schedule 12 - Security Aspects Letter & Annex A (to Schedule 12) - Security Grading Matrix

Redacted under FOIA Section 43, Commercial Interests

Schedule 13 - Supplier Assurance Questionnaire (SAQ)

Redacted under FOIA Section 43, Commercial Interests

Schedule 14 - DEFFORM 24 Specimen Form Of Guarantee Given By A Parent Company In Respect Of A Subsidiary

Schedule 14 Defform 24 Specimen Form Of Guarantee Given By A Parent Company In Respect Of A Subsidiary

THIS DEED OF GUARANTEE AND INDEMNITY GIVEN BY A
PARENT COMPANY IN RESPECT OF A SUBSIDIARY
is made the [] day of [] 20[]

BETWEEN:

- (1) [Insert the name of the name of the Guarantor] [[a company incorporated in England and Wales with number [] whose registered office is at []] or [a company incorporated under the laws of [insert country] registered in [insert country] with number [] at [insert place of registration] whose principal office is at []] ("the **Guarantor**"); in favour of
- (2) THE SECRETARY OF STATE FOR DEFENCE ("the **Authority**")

WHEREAS:

- (A) The Authority proposes to award contract number [insert number] ("the **Contract**") to [insert contractor's full corporate name] [insert company registration number] whose registered office is at [insert details] ("the **Contractor**").
- (B) It is a condition precedent of the Authority entering into the Contract with the Contractor that the Guarantor must first execute and deliver this Deed of Guarantee and Indemnity to the Authority.

Now in consideration of the Authority entering into the Contract, the Guarantor hereby irrevocably and unconditionally agrees with the Authority as follows:

1. The Guarantor shall provide all resources and facilities whether financial or otherwise to enable the Contractor duly to fulfil its obligations in and arising from the Contract subsisting between the Authority and the Contractor at the date of this deed or which shall be entered into at any time after the date of this deed between the Authority and the Contractor (the '**Indemnified Obligations**');
2. If:
 - a) the Contractor shall fail in any respect duly to perform and observe, or shall otherwise be in breach of, any of the Indemnified Obligations; or
 - b) any of the Indemnified Obligations are or become void, voidable, unenforceable or otherwise ineffective; or

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- c) the Contract is terminated owing to a breach or an event of default on the part of the Contractor; or
- d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor's undertaking or assets;

then, forthwith on demand from the Authority the Guarantor shall, as a primary obligation, indemnify the Authority against all losses, claims, liabilities, damages, expenses and costs which may be incurred, met or suffered by the Authority and which arise from or in connection with (whether directly or indirectly) any such matters save that, subject to the other provisions of this deed, the liability of the Guarantor under this clause shall not exceed the liability of the Contractor to the Authority under the Contract.

3. The Guarantor irrevocably and unconditionally undertakes that all sums received or recovered by the Authority:

- a) by way of dividend, composition or payment arising from the liquidation, bankruptcy or otherwise of the Contractor may be taken and applied by the Authority in part satisfaction of the losses, claims, liabilities, damages, expenses and costs referred to in paragraph 2 above, and the Guarantor's obligations under this deed shall stand good in respect of the balance;
- b) under this deed, may be credited to a suspense account and held in such account for so long as the Authority thinks fit pending the application of such monies towards the payment of the Indemnified Obligations;
- c) from the Contractor in respect of any of the Indemnified Obligations, may be applied by the Authority in any manner and in any order towards any debts owed by the Contractor to the Authority (whether or not relating to the Indemnified Obligations) as the Authority may determine (notwithstanding any appropriation or purported appropriation by any person);

4. The Guarantor shall have no right to be subrogated to the Authority and shall not make any claim against the Contractor (unless instructed so to do by the Authority, in which event the Guarantor shall make such a claim) in respect of the Guarantor's performance under this deed, until the Authority has received payment in full of its claim against the Contractor;

5. This deed shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the Contractor or any other person or, where the Contractor is a partnership, by any change in the partners;

6. The Guarantor shall not be discharged or released from its obligations under this deed:

- a) by any arrangement or agreement made between the Authority and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor: or

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- b) by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to the Guarantor's disadvantage, to or of, the obligations imposed upon the Contractor or any other person; or
- c) by any forbearance granted by the Authority to the Contractor or any other person as to payment, time, performance or otherwise; or
- d) by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this deed relates; or
- e) by any other matter or thing which but for this provision might exonerate the Guarantor and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without the Guarantor's knowledge or assent;

7. No failure to exercise or any delay in exercising on the Authority's part any right or remedy under this deed or under the Contract or any other agreement shall operate as a waiver of such right or remedy;

8. Any certificate or determination by the Authority of the amount due under this deed or under the Contract shall be, in the absence of manifest error, conclusive evidence of the matters to which it relates;

9. No settlement or discharge between the Authority and the Guarantor or the Contractor shall be effective if any payment to the Authority in respect of the Contractor's or the Guarantor's obligations to the Authority is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, the Authority shall be entitled to recover from the Guarantor the amount of such payment as if such settlement or discharge had not occurred;

10. The Authority shall not be obliged, before exercising any of its rights under this deed, to take any action against, or make any demand from, the Contractor or any other person;

11. The Guarantor's obligations under this deed are continuing obligations and shall not be considered satisfied, settled or terminated by the Authority giving any approvals, or taking delivery of any goods, or accepting any performance under the contract and no single, cumulative or partial exercise by the Authority of any right or remedy under or arising from this deed shall prevent any further exercise;

12. All payments under this deed shall be made without set-off, counter-claim or other deduction;

13. The Guarantor shall be bound by all court judgments or arbitration awards relating to the contract or any dispute or matter between the Authority and the Contractor;

14. This deed shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

[The following clause should only be used where the Guarantor is a company incorporated outside of England and Wales]

15. The Guarantor irrevocably appoints Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Guarantor in connection with this Deed or any related matter.

Delivered as a deed on the date of this document.

Executed as a deed by [insert corporate name].

in the presence of Director

..... Director or Company Secretary

62.4.1 Explanatory Notes

1. These explanatory notes are to assist in the completion of the DEFFORM 24 and should not be included in your completed Deed of Guarantee and Indemnity.
2. DEFFORM 24 is a Deed of Guarantee and Indemnity given by a Parent Company in respect of a Subsidiary. It is designed to cover a specific single contract entered into with the MOD by the subsidiary. The purpose of obtaining a Parent Company guarantee and indemnity is to ensure that the company is in a position to be able to execute the contract properly and, failing that, the MOD is reimbursed for any extra expenditure it may incur in making arrangements to have the contract completed elsewhere.
3. Where the company is able to offer a guarantee and indemnity from a parent (holding) company, commercial officers should ensure that they seek the guarantee and indemnity from the ultimate parent (holding) company in the group, rather than an intermediate parent (holding) company, or any other intermediate parent (holding) company where such exists. In such cases the MOD will wish to be satisfied as to the parent (holding) company's ability to provide the cover required, having regard to its financial resources and prospects. You should always ask Cost Assurance and Analysis Service - Industry Analysis (CAAS IA) to advise on this. Where the proposed contract is large, this may entail the holding company agreeing to a separate assessment by CAAS IA. In order to assure consistency throughout the MOD only this DEFFORM can be used as a Deed of Guarantee and Indemnity being given by a Parent Company.

62.4.2 Guidance On Completion

4. The specimen wording of the DEFFORM should be suitable for most circumstances and should not be changed at the request of a Guarantor. You must seek Central Legal Services – Commercial Law (CLS-CL) advice if the Guarantor requests a revision to the template DEFFORM or if the proposed Guarantor is a company registered outside England and Wales. In the latter case, you will need to seek legal advice to confirm both that the proposed Guarantor has power (under its own corporate rules and the laws of its home country) to enter into the deed and that it has executed the deed in a manner that makes it legally binding on the Guarantor.

62.4.3 Introductory Paragraph

5. Insert the contractor's name and, if applicable, registration number of the contractor (unless the contractor is a UK partnership or an overseas company it will be shown on the company letterhead) and the contract / tender details and dates and edit as appropriate.

62.4.4 Paragraph 1

6. Covers the Guarantor's obligations to the MOD to provide all resources and facilities (financial or otherwise) to enable the contractor to meet its obligations under the contract.

62.4.5 Paragraph 2

7. Covers the circumstances under which the guarantee and indemnity may be activated. This also requires the Guarantor to indemnify the MOD on demand against all losses and costs which the MOD has incurred as a result of these circumstances. However, the MOD cannot claim more under this paragraph from the Guarantor than they could claim from the contractor under the contract. If the

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contract contains a Limitation of Contractor's Liability, this will automatically apply to the indemnity under paragraph 2 of DEFFORM 24.

62.4.6 Paragraph 3

8. Covers the way in which any sums received by the MOD from either the contractor and / or the Guarantor may be used.

62.4.7 Paragraph 4

9. Covers the essential requirement of subrogation (the substitution in law of one party for another as the creditor). This will normally ensure that the Guarantor fulfils its obligations to the MOD before it takes any action to recover any claims of its own from the contractor. However, it also provides for the Guarantor to claim its right of subrogation if instructed to do so by the MOD, if that avenue would mean that it is able to recover money from a contractor in liquidation, which would then enable the Guarantor to meet the MOD claim.

62.4.8 Paragraph 5

10. Maintains the validity of this guarantee and indemnity even if the contractor changes its name, status and even ownership or control etc.

62.4.9 Paragraph 6

11. Prevents the Guarantor from subsequently avoiding its responsibilities even if there have been any amendments to the underlying contract.

62.4.10 Paragraph 7

12. Safeguards the MOD in the event of the MOD's failure or delay to call on the guarantee and indemnity.

62.4.11 Paragraph 8

13. The MOD may self-certify the amount of any demand for payment under the guarantee and indemnity. The Guarantor may only challenge this in cases of "manifest error".

62.4.12 Paragraph 9

14. Covers the scenario where the MOD may have received payment in settlement of a dispute but that payment then becomes void (e.g. if the payee soon thereafter becomes insolvent). The Guarantor still remains liable for the amount of the voided payment.

62.4.13 Paragraph 10

15. Confirms that MOD may seek recompense from the Guarantor without first having to attempt to make recovery from the contractor.

62.4.14 Paragraph 11

16. Confirms that the MOD taking delivery of goods, accepting performance under the contract or making any claim under the deed, does not relieve the Guarantor from its ongoing liability under the deed. This is to prevent accidental waiver of the MOD's rights.

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62.4.15 Paragraph 12

17. This is self explanatory.

62.4.16 Paragraph 13

18. Prevents the Guarantor from claiming that it may not be bound by an arbitrator's decision against a contractor, which could force the MOD to litigate the same point a second time with the possibility that a different court may reach a different conclusion.

62.4.17 Paragraph 14

19. Confirms that English law applies to the indemnity, no matter which national law may apply to any contract. Also, if the contractor is not subject to English law, the MOD may use the contractor's national law in order to enforce any claim that may be agreed.

62.4.18 Paragraph 15

20. Delete this clause if the Guarantor is an English company (i.e. a company incorporated in England or Wales). If the Guarantor is a foreign company, then the paragraph should be retained. In either case you should delete the introductory words in bold.

62.4.19 Execution

Insert the full corporate name of the Guarantor in the execution clause, where indicated. For the deed to be effective it is essential that it is signed by two directors of the Guarantor or by one director and the company secretary. It is now not strictly necessary for the Guarantor to apply its corporate seal - although the MOD may request it.

Schedule 15 - Project Delivery

Redacted under FOIA Section 43, Commercial Interests

Schedule 16 - Design Rights and Patents (Sub-Contractor's Agreement)

DEFFORM 177

Defform 177

Ministry of Defence

Schedule 16 - Design Rights and Patents (Sub-Contractor's Agreement)

Notes for Guidance

1. This note has been devised as an aid to the completion of DEFFORM 177.
2. This top sheet is to be detached before inclusion of the Agreement in a Contract or before submission to a sub-contractor.
3. In a draft for typing it will normally only be necessary to give instructions as follows: (although, if the Typing Pool is not one which is dedicated to Contracts work under the "Glasgow System" it will be necessary to attach a copy of DEFFORM 177).

Use a DEFFORM 177 and insert:

- a.* the date of the Agreement;
 - b.* the sub-contractor's full name;
 - c.* the sub-contractor's registered address;
 - d. paragraph 1 - the full name of the main Contractor;
 - e. paragraph 1 - the Contract number of the main contract;
 - f. paragraph 1 - the description of the equipment being designed and developed under the main contract as shown on the Schedule of the Contract;
 - g.* First Schedule - List of items appropriate to the sub-contract in question (the sub-contractor may insert these themselves if necessary);
 - h. Second Schedule - List of the relevant Intellectual Property Rights conditions applicable to the Contract (i.e. DEFCONs 14, 15, 15A, 90, 91 and 126 etc.).
4. It will also be necessary to amend the references to "design and development" should the subject Contract be a Feasibility Study, Project Definition etc.
 5. Similarly, as DEFFORM 177 is a drafting form, no references to the DEFFORM should appear in the Contract. This will require:
 - a. the deletion of the legend "DEFFORM 177 (Edn /)";

b. that any references required in the Contract should refer to “the Agreement in the form set out in Annex to the Contract”.

6. Two copies of the DEFFORM should be signed by a responsible officer on behalf of the sub-contractor and both of these should be returned for signature by the MOD representative. One copy is for the sub-contractor to retain, and the other is for retention by the Contracts Branch.

*N.B. This information will not necessarily be available at the drafting stage.

(hereinafter called "the Sub-Contractor") of the one part and THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Secretary of State") of the other part

WHEREAS:-

1. The Secretary of State has placed with (hereinafter called "the main contractor") a contract bearing the reference number (hereinafter called "the main contract") for the design and development of the effect of which is that the costs of such design and development (including the cost referable to any sub-contracts hereinafter referred to) will be substantially borne by the Secretary of State.
2. The main contractor contemplates that the design development and supply of certain components needed for performance of the main contract will be undertaken by various third parties in pursuance of sub-contracts made between them and the main contractor.
3. With a view to securing to the Secretary of State rights as regards inventions designs and other related matters in respect of any sub-contract the main contract provides that the main contractor shall not enter into any sub-contract for any component aforesaid without obtaining the prior approval of the Secretary of State.
4. The main contractor has now informed the Secretary of State that for the purpose of performing the main contract they wish to place with the Sub-Contractor a sub-contract for the design and development of the items described in the First Schedule (hereinafter called "the sub-contracted items") and has requested the Secretary of State's approval of the sub-contract accordingly.
5. The Secretary of State has signified its willingness to approve the sub-contract on condition that in consideration of it giving approval the Sub-Contractor enters into a direct Agreement with the Secretary of State concerning the matters hereinafter appearing and the Sub-Contractor has signified their willingness to enter into such an agreement.

NOW THIS AGREEMENT made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

1. The Sub-Contractor and the Secretary of State hereby agree to be bound to each other by the provisions of the Conditions as set out in the Second Schedule hereto.

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

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

Signed on behalf of
the Sub-Contractor

(in capacity of)

Signed on behalf of
The Secretary of
State for Defence

THE FIRST SCHEDULE

The Sub-Contract Items are:-

THE SECOND SCHEDULE

The Clauses which apply to this Agreement are:-

To be
inserted as
appropriate

except that:

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

Schedule 17 - Ministry of Defence Timber and Wood-Derived Products Supplied under the Contract – Data Requirements (DEFFORM 691A)

**Schedule 17 Ministry of Defence Timber and Wood-Derived Products
Supplied under the Contract – Data Requirements**

62.5 *Contract No:* **703962451**

The following information is provided in respect of clause 10 of DEFCON 691:

Schedule of Requirement s item and timber product type	Volume of timber delivered to the Authority with FSC, PEFC or equivalent evidence	Volume of timber delivered to the Authority with other evidence	Volume (as delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy	Total volume of timber delivered to the Authority under the Contract
Nil	Nil	Nil	Nil	Nil

The Contractor will comply with DEFCON 691 in the Terms and Conditions. For the purposes of this DEFFORM Thales confirm it is a Nil return.

Schedule 18 – Contractor's Commercial Sensitive Information (DEFFORM 539A)

Redacted under FOIA Section 43, Commercial Interests

Schedule 19 - Exit Management Plan

Schedule 19 - Exit Management Plan

1. INTRODUCTION

- 1.1 This Annex sets out the procedures for the planning of exit management arrangements in respect of the Contract. These arrangements shall apply during any full termination or part termination of Contract Deliverables under the Contract, and at Expiry of the Contract.
- 1.2 The Contract Expiry date, and the rights of termination and associated remedies and liabilities, shall be as defined in the terms and conditions of the Contract. In the event of any conflict or inconsistency between the provisions of this Schedule 19 of the Contract and any other terms and conditions of the Contract, then the Contract terms and conditions shall take precedence.
- 1.3 This Schedule 19 (*Exit Management Plan*) of the Contract will be reviewed annually by the Authority and the Contractor and amended by agreement as necessary to reflect revised requirements and to take account of emerging best practice.

2. OBJECTIVES

- 2.1 To identify the arrangements that will need to be developed and implemented to ensure an efficient and effective rundown of Services and closure of the Contract whilst maintaining any required Contract outputs during the rundown period.
- 2.2 to identify the arrangements that will need to be developed and implemented to ensure efficient and effective Services are provided to the Authority or an Authority Service Provider in relation to the Permitted Purpose for any Contract Deliverable whilst maintaining remaining Contract outputs.

3. NOTIFICATION

- 3.1 The Contractor shall provide written notification to the Authority not less than six (6) months prior to the Contract Expiry date if it is unable or unwilling on fair and reasonable terms to provide continued provision of the Services upon Expiry of the Contract.

4. CONTRACT CLOSURE AND TRANSITION PLAN

- 4.1 Without prejudice to the obligation of the Contractor under Clause 56. (*Intellectual Property Rights*) of the terms and conditions, and subject to the Contractors background intellectual property rights, where the Contract expires or is terminated in accordance with the provisions of the Contract and subject to any replacement contract covering part

all, or part, of the Services of the Contract, with or without, the Contractor; the Contractor shall generate a Contract Closure and Transition Plan.

The Scope of the Contract Closure and Transition Plan shall include but not limited to:

- a) The respective responsibilities and obligations of the Authority and the Contractor;
- b) The applicable Contract Closure schedule;
- c) The activities of the Parties; and
- d) The documentation to be provided.

Responsibilities and obligations during preparation for, and the return of:

- e) 2.3.1 Assets (GFA, Contractor assets and third party assets);
- f) Subcontracts;
- g) Operational documentation including records and databases, configuration documentation and manuals; and
- h) Software licences.
- i) The plan for handing over to the Authority GFA, Contractor assets, third party assets, and other records, configuration information, databases, documentation, asset registers, programs, fault databases, asset maintenance history and status, manuals, procedure documentation, software, licences and any other similar items used or produced during the course of the provision of the Service by the Contractor or relating to configuration control provided under the Services;
- j) Briefings on all the items handed over, their status and completeness and knowledge transfer of the Services;
- k) Details of any work in progress under the Contract (WIP)

4.2 The Parties shall use their reasonable endeavours to generate the Transition Plan within three (3) months of the date of the notification of Contract Expiry.

4.3 Pricing and payment arrangements for the Contractor's support to the development and implementation of the Contract and Closure Plan will be subject to Clause 38. Contract Tasking.

5. TECHNICAL DATA PACK

5.1 Without prejudice to the obligation of the Contractor under Clause 56. (*Intellectual Property Rights*) of the terms and conditions, the information required by the Authority in accordance with paragraph 4, shall be delivered to the Authority in a technical data pack and shall be provided to the extent and depth necessary to enable the Authority or an Authorised Service Provider by the Authority to provide the Services under this Contract.

5.2 The Authority shall have the right to use this technical data pack subject to the user rights determined in accordance with this Schedule 19 (*Exit Management Plan*). The technical data pack shall be marked accordingly as the property of the Authority.

6. TRANSFER OF ASSETS, MANAGEMENT INFORMATION & TECHNICAL INFORMATION

6.1 Within the Contract Closure and Transition Plan the Authority and the Contractor shall agree and detail those assets which would be required to support the provision of future services under the Permitted Purpose by the Authority or the Authority Service Provider together with the timing and arrangements for their transfer.

6.2 Subject to agreement and payment of a fair and reasonable price by the Authority to the Contractor, the Contractor shall provide the following (where it is able to do so without the agreement of a third party):

6.2.1 Management Information:

- (a) generic information including software in whatever format, used by the Contractor specifically for the purposes of managing and administering the Contract and which is agreed between the Parties as being necessary for the Authority or Authority Service Provider to manage any alternative arrangement for the Services provided under the Contract. If required, use by the Authority or Authority Service Provider of Contractor or third party owned IPR, in which the Authority has insufficient user rights, shall be subject to Contractor agreement on fair and reasonable terms or as the case may be third party agreement.
- (b) the nature and timescale for the transfer of such information shall be agreed and recorded in the Transition Plan.

6.2.2 Technical Information:

- (a) Copies of data, procedures, documentation and other information that have been utilised in providing the Service under the Contract and, which is agreed between the Parties as being necessary for the Authority or Authority Service Provider to manage any alternative arrangement or service required for the Permitted Purpose.
 - (i) Depending upon the nature of the information to be provided, consideration will be given as to whether the Authority also requires a licence for use to be put in place with the Contractor.
 - (ii) Where not otherwise provided for under the Contract, the granting of these rights shall be subject to agreement on fair and reasonable terms.
 - (iii) The Contractor may apply additional terms and conditions as to use, modification and enhancement of the material and ownership of rights in developed material as may appear necessary and reasonable but the Contractor shall not unreasonably withhold consent where the rights are reasonably required for continuing to deliver the same or a similar level of Services required under the Contract.
 - (iv) Where not otherwise provided for under the Contract provision of said technical information shall be subject to fair and reasonable price and payment provisions.
- (b) Spares modelling data (if appropriate) – the Contractor shall provide the Authority with an itemised estimate of the spares and ground support equipment provisioning requirements which is agreed between the Parties as being necessary for the Authority or Authority Service Provider to manage any alternative arrangement for the Services provided under the Contract:
 - (i) Such provision shall be an estimate and therefore no account will be taken of the Authority's and/or Authority Service Provider's method of operating that might lead to different levels of usage and spares and ground support requirements.
 - (ii) Information provided by the Contractor shall be the same information as used by the Contractor in their execution of the Contract. No guarantee or liability on the part of the Contractor is

given as to its accuracy, sufficiency or adequacy when used other Parties.

- (c) Obsolescence data – As agreed between the Parties as being necessary for the Authority or Authority Service Provider to manage any alternative arrangement for the Services provided under the Contract, the Contractor shall provide:
 - (i) a detailed report of all components where known obsolescence issues have been identified and appropriate action is underway and
 - (ii) a detailed history of all known components declared obsolete together with the solution adopted under the Contract since CED, or since the previous five (5) year period whichever is shorter.
- (d) Where the Authority intends to place a contract with a Authority Service Provider to provide services to undertake the Permitted Purpose of the Articles delivered under the Contract, then the Authority shall provide the Contractor with a written assurance that the Contractor's information provided to the Authority, shall be protected and not used by the Authority Service Provider outside of the Permitted Purpose. The Authority shall indemnify the Contractor for any breach of confidentiality and/or breach of the terms of use by the Authority Service Provider of the information provided.
- (f) The Contractor shall provide the Authority with a list of all:
 - (i) Licenses, supply agreements and maintenance agreements with third parties for third party Software including full copies of the terms of the software licence agreements; and
 - (ii) Contractor Software;which directly supports the provision of the Services (but the Contractor shall not be required to include in such list, or provide copies of, licences or agreements that support general business operations).
- (g) The Contractor shall deliver to the Authority the Source Code in a readable and amendable format relating to the latest version of the software generated under this Contract and which is Foreground IP under this Contract to the extent that such format exists.
- (h) No guarantee or liability on the part of the Contractor is given as to the accuracy, sufficiency or adequacy of technical and management information. Payment in respect of any additional information or assistance shall be made in accordance with paragraph 12 of this Annex E (*Exit Plan*).

6.2.3 Information or Know-How

- (a) If, on or after the end of the Contract term the Authority identifies that it does not possess particular information or know-how relating to, and necessary for the provision of the Service, or relating to one or more of the assets transferred in accordance with the exit management process, the Authority may, by notice in writing to the Contractor, request the Contractor's assistance in obtaining the required information or know-how.

- (b) The Contractor shall as soon as reasonably practicable provide the necessary information or know-how that is in its possession and that it is entitled to pass on. Information or know-how belonging to a third party may require consent before transferring. In all cases, provision of information and know-how is conditional upon agreement with the Authority as to terms of use, confidentiality and protection of IPR. No guarantee or liability on the part of the Contractor is given as to its accuracy, sufficiency or adequacy.
- 6.3 Where the Authority intends to place a contract with a Authority Service Provider to provide the services in relation to the Permitted Purpose for the Contract Deliverables under the scope of the Contract, then the Authority shall provide the Contractor with a written assurance that the Contractor's information, shall be protected and not used by the Authority Service Provider other than for the Permitted Purposes t. The Authority indemnifies the Contractor for any breach of confidentiality and/or breach of the terms of use by the Authority Service Provider of the information provided.
- 6.4 Nothing under this paragraph 6 shall diminish the provisions of Clause 56 (*Intellectual Property Rights*) of the Contract.

9. DISCONTINUATION OF SERVICES

- 9.1 In the event of the Contractor being insolvent or bankrupt and unable as a consequence thereof to provide the Services required under the Contract, it shall grant, where permissible in law, to the Authority, on the Authority's request, the right to take possession and ownership without charge of any or all information and material as the Authority so requires in order to ensure continued provision of the Services required. Legal title to the said collected information and material but not the intellectual property rights embodied therein save to the extent that they are owned by the Authority shall vest with the Authority and the Authority shall be entitled where permissible in law to use this information and material as collected for manufacture of the Articles or any part thereof with or without modifications and for support purposes.

PRICING & PAYMENT

- 12.1 Where work or action is required to be undertaken in support of the development and implementation of the Contract Closure and Transition Plan (including provision of the technical data pack), then the scope and price for the additional work or action will be agreed with the Authority in accordance with SSCR via Contract tasking, or as otherwise agreed between the Authority and the Contractor. Such pricing shall take account of the respective rights, remedies and liabilities of the Authority and the Contractor under the Contract. It shall also take account of the Authority's Intellectual Property user rights arising from the Contract or any other Contracts between the Authority and the Contractor or such third party owned intellectual property for which the Authority has secured rights. The Authority and Contractor shall agree a payment schedule for such agreed prices. Any such additional work scope shall be authorised by an amendment to the Contract.

13. DISPUTE RESOLUTION

- 13.1 Any dispute regarding the operation of this Schedule 19 (*Exit Management Plan*) of the Contract shall be dealt with in accordance with the Dispute Resolution provisions detailed in the Contract.

14. The contractor shall provide Draft Exit Management plan for Authority review by Contract Effective Date +3 Months.

Schedule 20 - DEFFORM 711 – Notification of Intellectual Property Rights (IPR)

Restrictions **Redacted under FOIA Section 43, Commercial Interests**