



SDA Naval Authority and Technology Group

Contract No: 701577554

For:

Submarine Main Battery TDP Phase 3a - Final Module Design

Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland	And
Team Name and address:	Contractor Name and address:
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Table of Contents

SC2 General Conditions	4
Supply of Contractor Deliverables	11
project specific DEFCONS and DEFCON SC variants that apply to the Contract	20
Third Party IPR Authorisation	32
Payment Terms	32
Quality Assurance Conditions	33
Special conditions that apply to this Contract	34
SC2 Schedules Definitions	39
Schedule 2 - Schedule of Requirements	48
Schedule 3 - Contract Data Sheet	54
Schedule 4 - Contract Change Control Procedure	58
Schedule 5 - Contractor's Commercial Sensitive Information Form	61
Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract	62
Schedule 8 - Acceptance Procedure	63
Schedule 9 – Statement of Requirement	64
Schedule 10 – Milestone Schedule	73
Schedule 11 - Statement of Technical Requirements	75
Schedule 12 – Security Aspect Letter	87
Schedule 12 – Annex A – Australian Security Conditions	90
Schedule 12 – Annex B – UK Security Conditions	93
Schedule 13 – Contract Data Requirements (DEFFORM 315)	101
Schedule 14 – Commercial Expiation Agreement (CEA)	103
DEFFORM 111	110

Terms and Conditions

Standardised Contracting Terms

SC2

GENERAL CONDITIONS

General Conditions

1. General

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
 - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their obligations under, the Contract;
 - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their obligations under the Contract;
 - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
 - (4) for so long as the Contract remains in force they shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
 - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or its nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
 - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

2. Duration of Contract

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

3. Entire Agreement

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

4. Governing Law

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
 - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
 - "a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
 - b. Subject to Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
 - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
 - (2) Clause 39.b shall be amended to read:
 - "In the event that the dispute or claim is not resolved pursuant to clause 39.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 39.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010."
- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

5. Precedence

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved

according to the following descending order of precedence:

- (1) Conditions 1 - 43 (and 44 - 46, if included in the Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
 - (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
 - (3) the remaining Schedules; and
 - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 40 (Dispute Resolution).

6. Formal Amendments to the Contract

- a. Except as provided in Condition 30 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
- (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used);
 - (2) the Authority's offer set out in a serially numbered amendment letter issued by the Authority to the Contractor; and
 - (3) the Contractor's unqualified acceptance of such offer as evidenced by the Contractor's duly signed DEFFORM 10B.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
- (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127. Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643 (SC2); or
 - (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

Changes to the Specification

- d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.
- e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

7. Authority Representatives

- a. Any reference to the Authority in respect of:
- (1) the giving of consent;
 - (2) the delivering of any Notices; or
 - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,
- shall be deemed to be references to the Authority's Representatives in accordance with this Condition 7.
- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives

which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with Condition 6 (Formal Amendments to the Contract).

8. Severability

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

9. Waiver

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

10. Assignment of Contract

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

11. Third Party Rights

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

12. Transparency

- a. Subject to clause 12.b but notwithstanding Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with clause 12.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 (Contractor's Commercially Sensitive Information).
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 12.b. The Contractor acknowledges and accepts that their representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this Condition 12 shall affect the Contractor's rights at law.

13. Disclosure of Information

- a. Subject to clauses 13.d to i, and Condition 12 each Party:
 - (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in

- confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
- (1) is disclosed to their employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
- c. The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. A Party shall not be in breach of Clauses 13.a, 13.b, 13.f, 13.g and 13.h to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
 - (3) can show:
 - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
 - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;provided that the relationship to any other Information is not revealed.
- e. Neither Party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Condition.
- f. The Authority may disclose the Information:
- (1) to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
 - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (4) subject to clause 13.g below, on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;
 - (5) subject to clause 13.g below, on a confidential basis for the purpose of the exercise of its rights under the Contract; or
 - (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;
and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Condition.
- g. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with clauses 13.f.(4) or 13.f.(5) above, the Authority will endeavour to provide the Contractor with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under

clause 13.f.(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.

- h. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- i. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- j. Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

14. Publicity and Communications with the Media

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

15. Change of Control of Contractor

- a. The Contractor shall notify the Representative of the Authority at the address given in clause 15.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
- b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:
 - Mergers & Acquisitions Section
 - Strategic Supplier Management Team
 - Spruce 3b # 1301
 - MOD Abbey Wood,
 - Bristol, BS34 8JH**and** emailed to: DefComrcISSM-MergersandAcq@mod.gov.uk
- c. The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to contract award.
- d. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 15.a. The Authority shall act reasonably in exercising its right of termination under this Condition.
- e. If the Authority exercises its right to terminate in accordance with clause 15.d the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

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

16. Environmental Requirements

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

17. Contractor's Records

- a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
- (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
 - (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to the provisions of Condition 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
- (1) the end of the Contract term;
 - (2) the termination of the Contract; or
 - (3) the final payment,
- whichever occurs latest.

18. Notices

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

19. Progress Monitoring, Meetings and Reports

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract

Data Sheet) and shall ensure that their Contractor's representatives are suitably qualified to attend such meetings.

- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
 - (1) performance/Delivery of the Contractor Deliverables;
 - (2) risks and opportunities;
 - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
 - (4) any other information reasonably requested by the Authority.

Supply of Contractor Deliverables

20. Supply of Contractor Deliverables and Quality Assurance

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
 - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
 - (2) discharge their obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause 20.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
 - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (2) notify the Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
 - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

21. Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 22 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

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

- a. Packaging responsibilities are as follows:
 - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the

Contract.

- (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
- (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
- (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:
 - (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.
 - (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
 - (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
 - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
 - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 22.i to 22.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
 - (1) The Health and Safety At Work Act 1974 (as amended);
 - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
 - (3) The REACH Regulations 2007 (as amended); and
 - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. 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:
 - (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
 - (2) The Air Navigation (Amendment) Order 2019.
- e. 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 Condition 23 (Supply of Hazardous Materials or Substances in Contractor Deliverables).
- f. The Contractor shall comply with the requirements for the design of MLP which include clauses 22.f and 22.g as follows:
 - (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.
 - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:
 DES SEOC SCP-SptEng-Pkg
 MOD Abbey Wood
 Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCP-SptEng-PKg@mod.uk

- (b) The MPAS Documentation is also available on the DStan website.
- (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).
- (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').
- (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
- (5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
- (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
- (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 22.f.(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
- (8) The documents supplied under clause 22.f.(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.
- g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:
 - (1) If the Contractor or their Subcontractor is the PDA they shall:
 - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 22.f.
 - (b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - i. a list of all SPIS which have been prepared or revised against the Contract; and
 - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
 - (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 22.g.(1)(b).
 - (2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
 - (3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 22.g.(1)(b).
 - (4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g.(1)(a) and 22.g.(1)(b).
- h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.
- i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
 - (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
 - (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

- (b) Each consignment package shall be marked with details as follows:
 - i. name and address of consignor;
 - ii. name and address of consignee (as stated in the Contract or order);
 - iii. destination where it differs from the consignee's address, normally either:
 - (i). delivery destination / address; or
 - (ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
 - iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
- (i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 22.l.
- (2) 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, to state the following:
 - (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.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
 - (1) the full 13-digit NSN;
 - (2) denomination of quantity (D of Q);
 - (3) actual quantity (quantity in package);
 - (4) manufacturer's serial number and / or batch number, if one has been allocated; and
 - (5) the CP&F-generated unique order identifier.
- k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet).
- l. The requirements for the consignment of aggregated packages are as follows:
 - (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
 - (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
 - (a) class group number;
 - (b) name and address of consignor;
 - (c) name and address of consignee (as stated on the Contract or order);
 - (d) destination if it differs from the consignee's address, normally either:
 - i. delivery destination / address; or
 - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;

- (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
- (f) the CP&F-generated shipping label; and
- (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 24 (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).
- o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. 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 Condition 17 (Contractor's Records).
- q. 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.
- r. 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.
- s. 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/>
- t. 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.
- u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

23. Supply of Data for Hazardous Materials or Substances in Contractor Deliverables

- a. The Contractor shall provide to the Authority:
 - (1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance the extant Classification, Labelling and Packaging (GB CLP) Regulation; and
 - (2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.
- Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the extant UK REACH Regulation:
 - (1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. 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 23.h below; and
 - (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.
 - c. If the Contractor is required, under, or in connection with the Contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

- d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
- e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the Contractor shall additionally provide details of:
 - (1) activity; and
 - (2) the substance and form (including any isotope);
- g. If the Contractor Deliverables, 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.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 23.a.(1) and 23.b.(1), any information arising from the provisions of clauses 23.e, 23.f and 23.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
 - (1) Hard copies to be sent to:
Hazardous Stores Information System (HSIS)
Department of Safety & Environment, Quality and Technology (DS & EQT)
Spruce 2C, #1260,
MOD Abbey Wood (South)
Bristol BS34 8JH
 - (2) Emails to be sent to:
DESTECH-QSEPEnv-HSISMULTI@mod.gov.uk
- i. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning Hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 42 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 42.
- j. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

24. Timber and Wood-Derived Products

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:
 - (1) shall comply with the Contract Specification; and
 - (2) must originate either:
 - (a) from a Legal and Sustainable source; or
 - (b) from a FLEGT-licensed or equivalent source.
- b. In addition to the requirements of clause 24.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
 - (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - (3) safeguarding the basic labour rights and health and safety of forest workers.
- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 24.a or 24.b or both.
- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.

- e. If the Contractor has already provided the Authority with the Evidence required under clause 24.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 24.a or 24.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).
- g. Notwithstanding clause 24.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
 - (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
 - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 24.a or 24.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
 - (1) verify the forest source of the timber or wood; and
 - (2) assess whether the source meets the relevant criteria of clause 24.b.
- i. The statistical reporting requirement at clause 24.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Condition 6 (Formal Amendments to the Contract).
- j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).
- k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with Condition 6 (Formal Amendments to the Contract).
- l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
 - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
 - (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

25. Certificate of Conformity

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (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.
- b. Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.
- c. The Information provided on the CofC shall include:
 - (1) Contractor's name and address;
 - (2) Contractor unique CofC number;
 - (3) Contract number and where applicable Contract amendment number;
 - (4) details of any approved concessions;
 - (5) acquirer name and organisation;
 - (6) Delivery address;

- (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
- (8) description of Contractor Deliverable, including part number, specification and configuration status;
- (9) NATO Stock Number (NSN) (where allocated);
- (10) quantities;
- (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

- d. Where Schedule 2 (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 25.d. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

26. Access to Contractor's Premises

- a. 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 their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 26.a are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

27. Delivery / Collection

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
 - (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (4) be responsible for all costs of Delivery; and
 - (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative (Transport) as detailed in box 10 of Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
 - (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
 - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
 - (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 27.b; or
 - (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 27.c.

28. Acceptance

- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:
- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
 - (2) the time limit in which to reject the Contractor Deliverables defined in clause 29.b has elapsed.

29. Rejection and Counterfeit Materiel**Rejection:**

- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of the Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.
- b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

Counterfeit Materiel:

- c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:
- (1) notify the Contractor of its suspicion and reasons therefore;
 - (2) where reasonably possible, and if requested by the Contractor within 10 Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
 - (3) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 29.c.(2).(i) or the provision of a sample at 29.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
 - (4) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel
Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 29.a-29.b (Rejection).
- d. In addition to its rights under 29.a and 29.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:
- (1) retain any Counterfeit Materiel; and/or
 - (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;
and such retention shall not constitute acceptance under Condition 28 (Acceptance).
- e. Where the Authority intends to exercise its rights under clause 29.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at their own risk and expense and subject to any reasonable controls specified by the Authority, for:
- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
 - (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.
- f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 29.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 29.e

but the Contractor fails to do so within the period specified by the Authority and subject to clause 29.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
 - (2) to pass it to a relevant investigatory or regulatory authority;
 - (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or
 - (4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor. Exercise of the rights granted at clauses 29.f.(1) to 29.f.(3) shall not constitute acceptance under Condition 28 (Acceptance).
- g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 29.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 29.f.(4) then the balance shall accrue to the Contractor.
- h. The Authority shall not use a retained Article or consignment other than as permitted in clauses 29.c – 29.j.
- i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- j. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 29.c – 29.j except where it has been determined in accordance with Condition 39 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 20.c.(4). In such circumstances the Authority shall reimburse the Contractor's reasonable costs of complying with clause 29.c.

30. Diversion Orders

- a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- b. 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.
- c. The Authority reserves the right to cancel the Diversion Order.
- d. 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.
- e. 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.
- f. 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 Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

31. Self-to-Self Delivery

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to their 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.

Licences and Intellectual Property

32. Import and Export Licences

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any

necessary UK import or export licence.

- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
 - (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
 - (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
 - (b) the end use as: For the Purposes of HM Government; and
 - (2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- c. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.
- e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
 - (1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
 - (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- g. Where the Authority invokes clause 32.e or 32.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
- i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
- j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.
- k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

(1) a non-UK export licence, authorisation or exemption; or

(2) any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 33 (Third Party Intellectual Property – Rights and Restrictions).

- l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to clause 32.k.(1) or 32.k.(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- m. If the information to be provided under clause 32.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clause 32.l.
- n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 32.l or 32.m of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.
- o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clause 32.l or 32.m of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.
- p. Where following receipt of materiel from a Subcontractor or any of their other suppliers restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 15 days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 15 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 32.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.
- r. In the event that the restrictions notified to the Authority pursuant to clause 32.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 32.n or 32.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with clause 32.l, termination under clause 32.t will be in accordance with Condition 42 (Material Breach) and the provisions of clause 33.v will not apply.
- s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of clause 32.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior

disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

u. Where:

(1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to clauses 32.s or 32.t or both; or

(2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Formal Amendments to the Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of Condition 41 (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 32.q or 32.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

33. Third Party Intellectual Property – Rights and Restrictions

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
- (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
- (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

clause 33.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

b. If the Information required under clause 33.a has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.

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

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949;

- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause 33.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause 33.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
 - (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
- h. The Authority shall assume all liability and shall indemnify the Contractor, their officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
 - (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
 - (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 33.a.
- k. Where authorisation is given by the Authority under clause 33.e, 33.f or 33.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
 - (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
 - (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
 - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the

- Contract or otherwise in the performance of the Contract;
- (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
 - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, their officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
 - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
- (1) clauses 33.a – 33.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
 - (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
 - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
 - (4) the Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
 - (5) following a notification under clause 33.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
 - (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in Condition 33 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. 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.

Pricing and Payment

34. Contract Price

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to clause 34.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

35. Payment and Recovery of Sums Due

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 35.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 35.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 35.a and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 35.c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

36. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these

input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 39 (Dispute Resolution).

- g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 36.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

37. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 11 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 37 shall be subject to:
 - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 35.f;
 - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (3) the Authority receiving notification under both clauses 37.b and 37.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 37.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
 - (1) is made aware of the Authority's continuing rights under clauses 37.a.(1) and 37.a.(2); and
 - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 37.a.(1) and 37.a.(2).
- d. The provisions of Condition 35 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

38. Subcontracting and Prompt Payment

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a subcontract, they shall cause a term to be included in such subcontract:
 - (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
 - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
 - (3) providing that where the Contractor fails to comply with clause 38.b.(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 38.b.(2) after a reasonable time has passed; and
 - (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 38.b.(1) to 38.b.(4).

Termination

39. Dispute Resolution

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

agree.

- b. In the event that the dispute or claim is not resolved pursuant to clause 39.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 39.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

40. Termination for Insolvency or Corrupt Gifts

Insolvency:

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

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- (6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
 - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
 - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (10) the court making an administration order in relation to the company; or
- (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (12) the company passing a resolution that the company shall be wound-up; or
- (13) the court making an order that the company shall be wound-up; or
- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 40.a.(9) to 40.a.(14) inclusive above.

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

Corrupt Gifts:

- c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):

- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
 - (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
 - (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this Condition, the Authority shall:
 - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.
- f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

41. Termination for Convenience

- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
- b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
 - (1) not start work on any element of the Contractor Deliverables not yet started;
 - (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
 - (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
 - (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 41.b.(2) and 41.b.(3) of this Condition.
- c. Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 41.b):
 - (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
 - (a) in the possession of the Contractor at the date of termination; and
 - (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

- (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - (a) all such unused and undamaged materiel; and
 - (b) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
- (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.
- d. The Authority shall (subject to clause 41.e below and to the Contractor's compliance with any direction given by the Authority in clause 41.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
 - (1) the Contractor taking all reasonable steps to mitigate such loss; and
 - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 41.a to 41.e except that:
 - (1) the name of the Contractor shall be substituted for the Authority except in clause 41.c.(1);
 - (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and
 - (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 41.
- g. Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

42. Material Breach

- a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.
- b. Where the Authority has terminated the Contract under clause 42.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (2) obtaining the Contractor Deliverable in substitution from another supplier.

43. Consequences of Termination

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

Additional Conditions

44. The project specific DEFCONS and DEFCON SC variants that apply to the Contract are:

45 Project specific DEFCONS and DEFCON SC variants that apply to this contract

DEFCON 023 (SC2)

DEFCON 023 (SC2) (Edn. 06/21) - Special Jigs, Tooling and Test Equipment

DEFCON 035

DEFCON 035 (Edn. 06/21) - Progress Payments

DEFCON 076 (SC2)

DEFCON 076 (SC2) (Edn. 06/21) - Contractor's Personnel at Government Establishments

DEFCON 532A (SC2)

DEFCON 532A (SC2) (Edn. 08/20) – Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 602B

DEFCON 602B (Edn. 12/06) - Quality Assurance (Without Deliverable Quality Plan)

DEFCON 624 (SC2)

DEFCON 624 (SC2) (Edn. 11/17) - Use of Asbestos

DEFCON 645

DEFCON 645 (Edn. 07/99) - Export Potential

DEFCON 647 (SC2)

DEFCON 647 (SC2) (Edn. 05/21) - Financial Management Information

DEFCON 649 (SC2)

DEFCON 649 (SC2) (Edn. 11/17) – Vesting

DEFCON 654

DEFCON 654 (Edn. 10/98) - Government Reciprocal Audit Arrangements

DEFCON 658 (SC2)

DEFCON 658 (SC2) (Edn. 09/21) – Cyber

DEFCON 658 - Cyber Risk Profile - Very Low

Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Very Low, as defined in Def Stan 05-138.

DEFCON 660

DEFCON 660 (Edn. 12/15) - Official-Sensitive Security Requirements

DEFCON 670 (SC2)

DEFCON 670 (SC2) (Edn. 11/17) - Tax Compliance

DEFCON 800

DEFCON 800 (Edn. 12/14) - Qualifying Defence Contract

DEFCON 801 (SC2)

DEFCON 801 (SC2) (Edn. 11/17) - Amendments to Qualifying Defence Contracts – Consolidated Versions

DEFCON 802

DEFCON 802 (Edn. 12/14) - QDC: Open Book on sub-contracts that are not Qualifying Sub-contracts

DEFCON 804 (SC2)

DEFCON 804 (SC2) (Edn. 11/17) - QDC: Confidentiality of Single Source Contract Regulations Information

Intellectual Property Rights**DEFCON 14**

DEFCON 14 (Edn. 06/21) - Inventions And Designs Crown Rights And Ownership Of Patents And Registered Designs

DEFCON 15

DEFCON 15 (Edn. 06/21) - Design Rights And Rights To Use Design Information

DEFCON 21

DEFCON 21 (Edn. 06/21) - Retention Of Records

DEFCON 90

DEFCON 90 (Edn. 06/21) - Copyright

DEFCON 703

DEFCON 703 (Edn. 06/21) - Intellectual Property Rights – Vesting in the Authority

Third Party IPR Authorisation**AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

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.

Payment Terms

Monthly payments shall be made to the Contractor in accordance with DEFCON 35. The Contractor shall only claim back costs they have incurred in delivering the current delivery milestone and the total costs claimed by the Contractor against delivery of a milestone must not exceed the value of the deliver millstone total price minus the contract profit rate. Profit shall only be paid to the contractor when the Authority has confirmed acceptance of all the milestone deliverables applicable to the respective milestone. The Contractor cannot claim costs for a subsequent milestone until all deliverables applicable to the current milestone have been accepted by the

Authority.

Quality Assurance Conditions

AQAP 2110

NATO Quality Assurance Requirements for Design, Development and Production.

Edition D Version 1

DEFSTAN 05-061 Pt 1

Quality Assurance Procedural Requirements - Concessions

Issue 6

DEFSTAN 05-061 Pt 4

Quality Assurance Procedural Requirements - Contractor Working Parties

Issue 3

DEFSTAN 05-061 Pt 9

Quality Assurance Procedural Requirements - Independent Inspection Requirements for Safety Critical Items

Issue 5

DEFSTAN 05-135

Avoidance of Counterfeit materiel

46 Special conditions that apply to this Contract

1. Limitations on Liability

Unlimited liabilities

1.1 Neither Party limits its liability for:

1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

1.1.2 fraud or fraudulent misrepresentation by it or its employees;

1.1.3 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

1.1.4 any liability to the extent it cannot be limited or excluded by law.

1.2 The financial caps on the Contractor's liability set out in Clause 1.4 below shall not apply to the following:

1.2.1 for any indemnity given by the Contractor to the Authority under this Contract;

1.2.2 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and condition 34 (Third Party IP – Rights and Restrictions);

1.2.3 breach by the Contractor of DEFCON 532A and Data Protection Legislation; and

1.2.4 for the avoidance of doubt any payments due from the Contractor to the Authority 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 1.4 below.

1.3 The financial caps on the Authority's liability set out in Clause 1.5 below shall not apply to the following:

1.3.1 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to condition 41; and

1.3.2 for the avoidance of doubt any payments due from the Authority to the Contractor 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 Clauses 1.5 below.

Financial limits

1.4 Subject to Clauses 1.1 and 1.2 and to the maximum extent permitted by Law:

1.4.1 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:

(i) in respect of DEFCON 76 (SC2) [£ pounds] [REDACTED] in aggregate;

(ii) in respect of condition 42b [£ pounds] [REDACTED] in aggregate;

1.4.2 without limiting Clause 1.4.1 and subject always to Clauses 1.1, 1.2, 1.2.5 and 1.4.3, 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 [£ pounds] [REDACTED] in aggregate.

1.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 1.4.1 and 1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 1.4.1 and 1.4.2 of this Contract.

1.5 Subject to Clauses 1.1, 1.3, 1.3.3 and 1.6, 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 the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

1.6 Clause 1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Redacted in accordance with Schedule 5, Contractor's Commercially Sensitive Information

Consequential loss

1.7 Subject to Clauses 1.1, 1.2 and 1.8, 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:

- 1.7.1 indirect loss or damage;
- 1.7.2 special loss or damage;
- 1.7.3 consequential loss or damage;
- 1.7.4 loss of profits (whether direct or indirect);
- 1.7.5 loss of turnover (whether direct or indirect);
- 1.7.6 loss of business opportunities (whether direct or indirect); or
- 1.7.7 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.

1.8 The provisions of Clause 1.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

1.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:

- (i) to any third party;
- (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and

(iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

1.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

1.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

1.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

1.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);

1.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;

1.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);

1.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

1.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

1.9 If any limitation or provision contained or expressly referred to in this Clause [1] 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 Clause [1].

Third party claims or losses

1.10 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 and condition 34 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:

1.10.1 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

1.10.2 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

1.11 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.

2. Commercial Exploitation Agreement

2.1 A Commercial Exploitation Agreement (CEA) has been agreed, this is a separate agreement but has been included in this contract for reference at Schedule 14.

3. Security Conditions

3.1 The Contractor shall comply with the Security Aspects Letter (SAL) at Schedule 12 and the Security Conditions include at Both Annex A and Annex B of the SAL.

4. Contract Kick-Off meeting

4.1 The Contractor shall deliver and facilitate a Contract Kick-off meeting at a UK location to be agreed by both parties.

4.2 The Contractor shall propose an agenda to the Authority for review at least one (1) week prior to the Contract Kick-off meeting.

4.3 The Contractor shall minute the meeting and provide a draft of the minutes for review to the Authority within two (2) weeks following the Contract Kick-off Meeting.

4.3 The Contractor shall finalise the minutes incorporating any amendments agreed with the Authority and distribute a soft copy to the Contract Kick off meeting attendees.

5. Provision of background Intellectual Property and technical data

[REDACTED]

[REDACTED]

[illegible]

Redacted in accordance with Schedule 5, Contractor's Commercially Sensitive Information

6. Provisional Price Clause for QDCs

6.1 The parties recognise that each has a legal obligation, under section 20 of the Defence Reform Act 2014, to be satisfied that the costs included in the contract price are Appropriate, Attributable and Reasonable (together 'AAR'). The parties also recognise that, at the time of contract award, the information provided to the Authority by PMB Defence Engineering Pty Ltd is not sufficient to allow the Authority to be satisfied that all the costs included in the contract price are AAR.

6.2 To address this, the Authority will submit a request for the Australian Department of Defence Financial Investigation Service (FIS) to conduct a reciprocal pricing audit on PMB DEFENCE ENGINEERING PTY LTD. The Authority will provide the cost data supplied as part of the tender response to FIS so that an 'AAR assessment' can be made.

6.3 Should FIS request further information than has already been provided, the parties agree that PMB DEFENCE ENGINEERING PTY LTD will provide to the Authority, within 30 days of the request, sufficient information to enable the FIS to be satisfied that those identified costs included in the contract price are AAR or, alternatively, to enable the FIS to be satisfied as to what revised quantum of costs would be AAR.

6.4 Following that provision of information and the FIS analysis thereof, the Authority and PMB DEFENCE ENGINEERING PTY LTD shall meet within 30 days of the authority's request to consider whether, and if so in what respect, it is necessary to re-price the Contract in accordance with the cost data to the Single Source Contract Regulations 2014.

6.5 Without prejudice to any other right which the Authority may have, in the event that the Authority does not consider that PMB DEFENCE ENGINEERING PTY LTD has complied with its obligation under this clause, or it is still not satisfied that the costs included in the contract price are AAR, it intends to refer the contract to the SSRO for a determination of allowable costs, pursuant to section 20 of the Defence Reform Act 2014.

SC2 Schedules

Schedule 1 - Definitions of Contract

Articles

means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. **(This definition only applies when DEFCONs are added to these Conditions);**

Authority

means the Secretary of State for Defence acting on behalf of the Crown;

Authority's Representative(s)

shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of Condition 7;

Business Day

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

Central Government Body

a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- a. Government Department;
- b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c. Non-Ministerial Department; or
- d. Executive Agency;

Collect

means pick up the Contractor Deliverables from the Consignor. This shall include loading, and

any other specific arrangements, agreed in accordance with Clause 28.c and Collected and Collection shall be construed accordingly;

Commercial Packaging

means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)

Conditions

means the terms and conditions set out in this document;

Consignee

means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;

Consignor

means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;

Contract

means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Formal Amendments to the Contract);

Contract Price

means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.

Contractor

means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;

Contractor Commercially Sensitive

means the Information listed in the completed

Information

Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

Contractor Deliverables

means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;

Control

means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

- a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
- b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

CPET

means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;

Crown Use

in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

Dangerous Goods

means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations

2009 (CDG) (as amended 2011);
b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
d. International Maritime Dangerous Goods (IMDG) Code;
e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;
f. International Air Transport Association (IATA) Dangerous Goods Regulations.

DBS Finance

means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);

DEFFORM

means the MOD DEFFORM series which can be found at <https://www.aof.mod.uk>;

DEF STAN

means Defence Standards which can be accessed at <https://www.dstan.mod.uk>;

Deliver

means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with Condition 28 and Delivered and Delivery shall be construed accordingly;

Delivery Date

means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;

Denomination of Quantity (D of Q)

means the quantity or measure by which an item of material is managed;

Design Right(s)

has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

Diversion Order

means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in

Schedule 3 (Contract Data Sheet);

Effective Date of Contract

means the date specified on the Authority's acceptance letter;

Evidence

means either:

- a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or
- b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;

Firm Price

means a price (excluding VAT) which is not subject to variation;

FLEGT

means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;

Government Furnished Assets (GFA)

is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;

Hazardous Contractor Deliverable

means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

Independent Verification

means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";

Information	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
Issued Property	means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;
Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;
Legislation	means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
Military Level Packaging (MLP)	means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
Military Packager Approval Scheme (MPAS)	is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
Military Packaging Level (MPL)	shall have the meaning described in Def Stan 81-041 (Part 1);
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs

	including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Notices	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Primary Packaging Quantity(PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: a. pre-consumer reclaimed wood and wood fibre and industrial by-products; b. post-consumer reclaimed wood and wood fibre,

and driftwood;
c. reclaimed timber abandoned or confiscated at least ten years previously;
it excludes sawmill co-products;

Safety Data Sheet

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

Schedule of Requirements

means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;

Short-Rotation Coppice

means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

Specification

means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, and shall include any document or item which, individually or collectively is referred to in Schedule 2 (Schedule of Requirements). The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification;

STANAG4329

means the publication NATO Standard Bar Code Symbolologies which can be sourced at <https://www.dstan.mod.uk/fags.html>;

Subcontractor

means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;

Timber and Wood-Derived Products

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

Transparency Information

means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;

Virgin Timber

means Timber and Wood-Derived Products that do not include Recycled Timber.

Schedule 2 - Schedule of Requirements

Name and Address of Contractor PMB DEFENCE ENGINEERING PTY 655 Mersey Road North Osborne, Australia SA 5017	MINISTRY OF DEFENCE	Contract No 701577554
	Schedule of Requirements for Submarine Main Battery TDP Phase 3a - Final Module Design	
		Previous Contract No CCDT/593

TABLE I – PHASE 3A REQUIREMENTS

MILESTONE NUMBER	LINE ITEM NUMBER	DESCRIPTION	DELIVERY DATES	Total Firm/Fixed Price GBP (ex-VAT)
M.1	1.1	Delivery and facilitation of a Contract Kick-off Meeting in accordance with clause 45, special Condition 4, and delivery of a Technical Data Pack in accordance with Condition 5. Provision of licence to Intellectual Property Rights and technical data.	ED+ 4 Weeks	
	1.2	Provision of a signed bank guarantee form for a minimum value of [REDACTED]	ED+ 4 Weeks	
	M.1 TOTAL MILESTONE FIRM PRICE			[REDACTED]
M.2	2	Delivery of a Land Based Test Site qualification test plan in accordance with RQ4 ii of the Statement of Requirement at Schedule 9 to the Contract	ED + 4 Weeks	
	M.2 TOTAL MILESTONE FIRM PRICE			[REDACTED]
M.3	2.1	Delivery of a Shock Design Report in accordance with RQ7 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 12 Weeks	
	2.2	Delivery of a Supporting Design Reports in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 12 Weeks	
	2.3	Delivery of a Preliminary BSF Design report in accordance with RQ1b of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 12 Weeks	
	3.1	Delivery of an Updated System Specification in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 14 Weeks	

MILESTONE NUMBER	LINE ITEM NUMBER	DESCRIPTION	DELIVERY DATES	Total Firm/Fixed Price GBP (ex-VAT)
	3.2	Delivery an Updated Module Specification in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 14 Weeks	
	3.3	Delivery and facilitation of a Critical Design Review in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 14 Weeks	
	3.4	Delivery of a Phase 2 cells, long term cycling report in accordance with RQ2 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 14 Weeks	
	4	Delivery of Monthly Project Management Progress Reports for Milestone 1 in accordance with RQ5 of the Statement of Requirement at Schedule 9 to the Contract.	Within 5 working days of the end of each calendar month	
	5	Delivery and facilitation of a Quarterly Progress workshop in accordance with RQ6 of the Statement of Requirement at Schedule 9 to the Contract.	Date and location to be agreed between the parties	
M.3 TOTAL MILESTONE FIRM PRICE				
M.4	6.1	Delivery of a BSF Design Report in accordance with RQ1b of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 26 Weeks	
	6.2	Delivery of supporting design reports in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 26 Weeks	
	6.3	Manufacture of [REDACTED] production standard modules in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 26 Weeks	
	6.4	Delivery of [REDACTED] Factory Acceptance Reports in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 26 Weeks	
	6.5	Delivery of a Manufacturing Data Pack in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract and CDR001 (DEFFORM 315) at Schedule 13 to the Contract.	ED+ 26 weeks	
	7.1	Delivery and facilitation of a Manufacturing Readiness Review in accordance with RQ9 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 28 Weeks	
	7.2	Delivery of a Phase 2 module report in accordance with RQ2 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 28 Weeks	
	8	Delivery of Monthly Project Management Progress Reports for Milestone 2 in accordance with RQ5 of the Statement of Requirement at Schedule 9 to the Contract.	Within 5 working days of the end of each calendar month	
	9	Delivery and facilitation of a Quarterly Progress workshop in accordance with RQ6 of the Statement of Requirement at Schedule 9 to the Contract.	Date and location to be agreed between the parties	

MILESTON E NUMBER	LINE ITEM NUMBER	DESCRIPTION	DELIVERY DATES	Total Firm/Fixed Price GBP (ex- VAT)
	M.4 TOTAL MILESTONE FIRM PRICE			
M.5	10.1	Delivery of a Shock Test report in accordance with RQ7 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	10.2	Delivery of an EMI evaluation report in accordance with RQ8 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	10.3	Delivery of an Updated Safety and Environmental Management Plan, HAZID, EISS in accordance with RQ4i of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	10.4	Delivery of a Pre-Construction Safety Report in accordance with RQ4iii of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	10.5	Manufacture of production standard modules in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	10.6	Delivery of sets of Factory Acceptance Reports in accordance with RQ1a of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	10.7	Delivery of a Phase 2 module report in accordance with RQ2 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	10.8	Delivery of a Submodule Thermal Test Report in accordance with RQ3 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 42 Weeks	
	11.1	Delivery of a Final summary report in accordance with RQ10 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 44 Weeks	
	11.2	Delivery and facilitation of a Final Close out meeting in accordance with RQ10 of the Statement of Requirement at Schedule 9 to the Contract.	ED+ 44 Weeks	
	12	Delivery of Monthly Project Management Progress Reports for Milestone 3 in accordance with RQ5 of the Statement of Requirement at Schedule 9 to the Contract.	Within 5 working days of the end of each calendar month	
	13	Delivery and facilitation of a Quarterly Progress workshop in accordance with RQ6 of the Statement of Requirement at Schedule 9 to the Contract.	Date and location to be agreed between the parties	
		M.5 TOTAL MILESTONE FIRM PRICE		
TOTAL CONTRACT FIRM PRICE				£2,297,509

Redacted in accordance with Schedule 5, Contractor's Commercially Sensitive Information

TABLE II - OPTIONS

OPTION NUMBER	DESCRIPTION	DELIVERY DATES	Max Price GBP (ex-VAT) (Firm price to be agreed when option is invoked)
1	<p style="text-align: center;">Phase 3b</p> <p>An option to extend the contract by up to three years and include the Submarine Main Battery Phase 3b work package.</p> <p>The Authority may invoke this Option 1 at their discretion via a contract amendment.</p> <p>The Phase 3b work package includes the manufacture of a full-scale test array, land based testing of the test array and delivery of a full-size battery system.</p> <p>This option has a Max Price of £20,000,000. A Firm price shall be agreed in accordance with the Defence Reform Act 2014 and the applicable secondary legislation prior to this option being invoked.</p> <p>The requirement for Phase 3b shall be agreed between the parties and the Contract shall be updated to accommodate this requirement via a contract amendment when this option is invoked.</p> <p>Limitation on liability and IPR shall be reassessed prior to this option being invoked to accommodate the Phase 3b work package. The contract terms and conditions shall be updated, as required, via a contract amendment when this option is invoked.</p> <p>This option is unfunded and is not captured within the Authority's approval value for this Contract. Separate approval of funding will need to be obtained by the Authority prior to invoking this option.</p>	A maximum of 3 Years in duration	£20,000,000

MOD

MOD Purchase Contract (CPA) 701577554

Schedule 3 - Contract Data Sheet

General Conditions
Condition 2 – Duration of Contract: <p>The Contract expiry date shall be: Effective date of Contract + 12 months</p>
Condition 4 – Governing Law: <p>Contract to be governed and construed in accordance with: English Law</p> <p>Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause 4.g (if applicable) are as follows:</p>
Condition 7 – Authority’s Representatives: <p>The Authority’s Representatives for the Contract are as follows:</p> <p>Commercial: (as per DEFFORM 111)</p> <p>Project Manager: (as per DEFFORM 111)</p>
Condition 18 – Notices: <p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: (as per DEFFORM 111)</p> <p>Contractor: PMB Defence Engineering Pty Ltd of 715 Mersey Road North, Osborne, South Australia, 5017</p> <p>Notices can be sent by electronic mail? yes</p>
Condition 19.a – Progress Meetings: <p>The Contractor shall be required to attend the following meetings: (as per the Statement of Requirement at Schedule 9)</p>
Condition 19.b – Progress Reports: <p>The Contractor is required to submit the following Reports: (as per the statement of Requirement at Schedule 9)</p> <p>Reports shall be delivered to the following address: Electronic copy delivered to the Authority Project Manager</p>

<p>Supply of Contractor Deliverables</p> <p>Condition 20 – Quality Assurance:</p> <p>Is a Deliverable Quality Plan required for this Contract? No</p> <p>If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.</p> <p>Other Quality Assurance Requirements: (as per Quality Assurance Conditions)</p>
<p>Condition 21 – Marking of Contractor Deliverables:</p> <p>Special Marking requirements: N/A</p>
<p>Condition 23 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:</p> <p>A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <ul style="list-style-type: none"> a) The Authority's Representative (Commercial) b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.uk <p>to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date:</p>
<p>Condition 24 – Timber and Wood-Derived Products:</p> <p>A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to the Authority's Representative (Commercial)</p> <p>to be Delivered by the following date: Effective date + 4 months</p>
<p>Condition 25 – Certificate of Conformity:</p> <p>Is a Certificate of Conformity required for this Contract? No</p>

Applicable to Line Items: None

If required, does the Contractor Deliverables require traceability throughout the supply chain?
N/A

Applicable to Line Items: None

Condition 27.b – Delivery by the Contractor:

The following Line Items are to be Delivered by the Contractor: N/A

Special Delivery Instructions:

Each consignment is to be accompanied by a DEFFORM 129J.

Condition 27.c - Collection by the Authority:

The following Line Items are to be Collected by the Authority: N/A

Special Delivery Instructions:

Each consignment is to be accompanied by a DEFFORM 129J.

Consignor details (in accordance with Condition 27.c.(4)): N/A

Line Items: Address:

Line Items: Address:

Consignee details (in accordance with condition 22): N/A

Line Items: Address:

Line Items: Address:

Condition 29 – Rejection:

The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:

The time limit for rejection shall be twenty (20) Business Days.

Condition 31 – Self-to-Self Delivery:

Self-to-Self Delivery required? N/A

If required, Delivery address applicable:

Pricing and Payment**Condition 34 – Contract Price:**

All Schedule 2 line items shall be FIRM Price other than those stated below:

Line Items

Clause 46. refers

Termination**Condition 41 – Termination for Convenience:**

The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:

The Notice period for termination shall be twenty (20) Business Days

Other Addresses and Other Information (*forms and publications addresses and official use information*)

See Annex A to Schedule 3 (DEFFORM 111)

Schedule 4 - Contract Change Control Procedure (i.a.w. Clause 6b)**Contract No: 701577554****Authority Changes**

1. The Authority shall be entitled to propose any change to the Contract (a "Change") or (subject to Clause 2) Changes in accordance with this Schedule 4.
2. Nothing in this Schedule shall operate to prevent the Authority from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

Notice of Change

3. If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "Authority Notice of Change") on the Contractor.
4. The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clauses 7 to 9 (inclusive).
5. The Contractor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):
 - a. would, if implemented, require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable law relevant to such delivery; and/or
 - b. would, if implemented, cause any existing consent obtained by or on behalf of the Contractor in connection with their obligations under the Contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Contractor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
 - c. would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract;

and:

 - d. the Contractor notifies the Authority within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c providing written evidence for the Contractor's reasoning on the matter; and
 - e. further to such notification:
 - (1) either the Authority notifies the Contractor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Contractor that the Authority disputes the Contractor's notice under Clause 5.d) it is determined in accordance with Condition 40 (Dispute Resolution), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c; and
 - (2) (where the Authority either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change) to remove the Contractor's grounds for refusing to implement the relevant Change under Clauses 5.a, 5.b and/or 5.c within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after:

- i) the date on which the Authority notifies in writing the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c); or
- ii) the date of such determination.

6. The Contractor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

Contractor Change Proposal

7. As soon as practicable, and in any event within:

- a. (where the Contractor has not notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5) fifteen (15) Business Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contract shall have received the Authority Notice of Change; or
- b. (where the Contractor has notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5 and:

- (1) the Authority has agreed with the Contractor's conclusion so notified or it is determined under Condition 40 (Dispute Resolution) that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c and the Authority has made sufficient adjustments to the relevant Authority Notice of Change (and issued a revised Authority Notice of Change(s)) to remove the Contractor's grounds for refusing to implement the relevant Change(s) under Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contractor shall have received such revised Authority Notice of Change; or
- (2) the Authority has disputed such conclusion and it has been determined in accordance with Condition 40 (Dispute Resolution) that the relevant Change(s) is/are not a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date of such determination,

the Contractor shall deliver to the Authority a Contractor Change Proposal. For the avoidance of doubt, the Contractor shall not be obliged to deliver to the Authority a Contractor Change Proposal where the Contractor notifies the Authority, and the Authority agrees or it is determined further to such notification in accordance with Clause 5, that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c.

8. The Contractor Change Proposal shall comprise in respect of each and all Change(s) proposed:

- a. the effect of the Change(s) on the Contractor's obligations under the Contract;
 - b. a detailed breakdown of any costs which result from the Change(s);
 - c. the programme for implementing the Change(s);
 - d. any amendment required to this Contract as a result of the Change(s), including, where appropriate, to the Contract Price; and
 - e. such other information as the Authority may reasonably require.
9. The price for any Change(s) shall be based on the prices (including rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change(s).

Contractor Change Proposal – Process and Implementation

10. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
 - a. evaluate the Contractor Change Proposal; and
 - b. where necessary, discuss with the Contractor any issues arising (and (in relation to a Change(s) proposed by the Authority) following such discussions the Authority may modify the Authority Notice of Change) and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties shall have agreed in writing) after receipt of such modification, submit an amended Contractor Change Proposal.
11. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
 - a. either indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract), whereupon the Contractor shall promptly issue to the Authority the Contractor's DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Condition and implement the relevant Change(s) in accordance with such proposal; or
 - b. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such notice of change shall have no further effect).
12. If the Authority rejects the Contractor Change Proposal, it shall not be obliged to give its reasons for such rejection.
13. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 11.a and then subject only to the terms of the Contractor Change proposal so accepted.

Contractor Changes

14. If the Contractor wishes to propose a Change or Change(s), they shall serve a Contractor Change Proposal on the Authority. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Clauses 8 to 13 (inclusive).

Schedule 5 - Contractor's Commercial Sensitive Information Form (i.a.w. condition 12)

Contract No: 701577554
<p>Description of Contractor's Commercially Sensitive Information:</p> <ol style="list-style-type: none"> 1. Limitations on Liability 2. Price and Payment (including Contract Profit Rate) 3. Background Intellectual Property (IP) and technical data relating to the NiZn design
<p>Cross Reference(s) to location of sensitive information:</p> <ol style="list-style-type: none"> 1. Limitations on Liability 2. Price and Payment (including Contract Profit Rate) 3. Background Intellectual Property (IP) and technical data relating to the NiZn design – special Conditions Clause 45, Subclause 5 (Provision of background Intellectual Property and technical data)
<p>Explanation of Sensitivity:</p> <ol style="list-style-type: none"> 1. Contains details about insurance and liability regime of the Contract. 2. Contains details about commercially sensitive pricing information that is not in the public domain. Including information about hourly rates, internal costing, profit margins, or pricing structures. 3. Contains details about intellectual property regimes including trade secrets and other intellectual property matters where relate to the Contractor's competitive position.
<p>Details of potential harm resulting from disclosure:</p> <p>Disclosure of above listed sensitive information will incur one or multiple of these losses to the Contractor, including but not limited to loss of earnings, profits, opportunities or competitiveness including financial, opportunity or reputational damages.</p>
<p>Period of Confidence (if applicable): Perpetual</p>
<p>Contact Details for Transparency / Freedom of Information matters:</p> <p>████████████████████</p> <p>██</p> <p>██</p> <p style="text-align: right;">Redacted under General Data Protection Regulation (GDPR) – Personal Data</p>

Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract**Data Requirements for Contract No:**

The following information is provided in respect of condition 24 (Timber and Wood-Derived Products):

Schedule of Requirements 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

Schedule 8 - Acceptance Procedure (i.a.w. condition 28)**Contract No: 701577554**

1. All Line Items of the Schedule of Requirements will be either accepted in accordance with condition 28 of the contract or rejected in accordance with condition 29 of the contract by the Authority Project Manager (as detailed in DEFFORM 111)
2. For Line Items 2, 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, 3.4, 6.1, 6.2, 6.3, 6.4, 6.5, 7.2, 10.1, 10.2, 10.5, 10.6, 10.7, 10.8 and 11.1 of the Schedule of Requirements the Authority Project Manager with input from subject matter experts where required, will assess the deliverables due under each Line Item to ensure they meet the requirements and acceptance criteria specified in the Statement of Requirement at Schedule 9 and the Statement of Technical Requirements at Schedule 11.
3. For Line Items 4, 5, 7.1, 8, 9, 10.3, 10.4, 11.2, 12, 13 the of the Schedule of Requirements the Authority Project Manager with input from subject matter experts where required, will assess the deliverables due under each Line Item to ensure they meet the requirements and acceptance criteria specified in the Statement of Requirement at Schedule 9.
4. Line Item 1.1 shall be assessed by the Authority Project Manager in accordance with condition 45, special condition 5.
5. For all deliverable reports, documentation and designs the Authority Project Manager may suggest recommendations for amendments to the Contractors prior to acceptance or rejection. Where amendments are suggested by the Authority Project Manager the Contractor shall amend the respective report, document or design and resubmit the updated deliverable to the project manager within a timeframe agreed between the Authority and the Contractor.

Schedule 9 – Statement of Requirement

STATEMENT OF REQUIREMENT FOR THE SUBMARINE MAIN BATTERY TECHNOLOGY DEVELOPMENT PROJECT (TDP) PHASE 3A – DELIVERY OF THE FINAL MODULE DESIGN

Background

1. [REDACTED] a TDP was established to explore alternative battery technologies and has proved the capability of the selected chemistry, NiZn.
Redacted in accordance with Military Sensitive Technical Information
2. Phase 1 of the TDP concluded in 2018, and NiZn chemistry was chosen due to its inherent safety advantage which allows reduced complexity compared to a lithium ion-based solution. It was established that there is little, if any, commercial appetite for the development of new NiZn battery systems which are suitable for submarine applications and there is no existing market or product which could be rapidly exploited.
3. Phase 2 of the TDP will complete in September 2021. [REDACTED]
[REDACTED] A module to package the cells into the same footprint as the existing Lead Acid cells has been designed which requires no change to the structure of the battery compartment or the platform electrical system. Ten modules have been built and validated [REDACTED]

Redacted in accordance with Schedule 5, Contractor's Commercially Sensitive Information

Scope of the Requirement

4. The intended next phase will build initial production standard modules, applying the experience of Phase 2 to improve the existing design. This design will be shock tested and undergo EMI pre-qualification to reach TRL 5/6.

Requirement

Requirement No.	Requirement	Deliverable(s) Description	Delivery Timing	Acceptance Criteria
RQ1	a) The Contractor shall produce [REDACTED] modules to initial production standard ensuring lessons learned from the Phase 2 contract CCDT593 are used to refine the	i) Delivery of [REDACTED] initial production standard modules, two of which will be used for shock qualification (in accordance with requirement RQ8) and the remaining [REDACTED] will be used for	The design baseline will be determined by a Design Review by the end of Month 1.	The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure

	<p>existing module design.</p> <p>b) The Contractor shall develop the design for the Battery Surveillance Function module components and the algorithm which will define the information which will be presented to operators. Use outputs to inform Requirement RQ1a.</p>	<p>proving of production processes and additional long term cycling (in accordance with requirement RQ2) in subsequent Phases, as a source of evidence regarding the life span and degradation processes, to inform the Safety Case Report. [REDACTED] used for long term cycling will also be used for RQ9.</p>	<p>The module design will be confirmed by a Critical Design Review by the end of Month 3.</p> <p>The BSF design will be confirmed by a design review by the end of Month 6.</p> <p>The modules will be delivered, complete, by the end of month 9.</p>	<p>at Schedule 8.</p> <p>The Authority Project manager will visit the Contractor's UK production premises during manufacturing and upon completion of the module production. The contractor shall demonstrate to the Authority project manager that production has finished, the modules have been built and are complete and the modules are ready for further testing as specified in the Statement of Requirement.</p> <p>[REDACTED] the modules will be destroyed through the shock testing process, the remaining [REDACTED] modules will be retained by the Contractor at their premises, for long term cycling in accordance with RQ2, in subsequent Phases.</p> <p>The Contractor will retain ownership of the module and all associated costs of maintenance, disposal and transportation will be the Contractor's liability.</p> <p>Factory Acceptance testing will be conducted on all [REDACTED] modules. Factory Acceptance Testing and the Factory Acceptance Test Reports shall</p>
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				demonstrate that the modules meet the Factory Acceptance Test Report requirements of the Statement of Technical Requirements (SOTR) at Schedule 11.
		ii) Delivery of an initial production module Design Report inclusive of all supporting documentation and drawings.	<p>The module design will be confirmed by a Critical Design Review by the end of Month 3.</p> <p>The BSF design will be confirmed by a design review by the end of Month 6.</p> <p>The final design and all supporting documentation will be confirmed in a Manufacturing Readiness Review at the end of Month 9, the manufacturing data pack containing all drawings and documentation to be delivered two weeks ahead of the MRR.</p>	<p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8.</p> <p>The Design Report and associated documentation shall include a declaration, with supporting evidence to demonstrate the design meets the Design Report requirements of the SOTR at Schedule 11.</p>
RQ2	The Contractor shall continue to conduct long term discharge/charge cycling of the NiZn cells which have been tested under the Phase 2 contract CCDT593 for the duration of this Contract, to demonstrate the long term performance of the NiZn	Delivery of quarterly reports specifying the performance and condition of modules undergoing discharge/charge cycling together with a daily record of maximum ambient temperature.	Delivered three months for the duration of the Phase 3a Contract.	The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8 and the Deliverable(s) description.

	cells.			<p>The cycling regime, number and configuration of cells will be agreed by both parties within 4 weeks of Contract Award, within input as required from MoD technical and safety experts.</p> <p>The content of the Cycling reports will be agreed between both parties during the course of the contract, as input will be required from MoD technical and safety experts.</p> <p>Once agreed the report will need to demonstrate it meets the agreed requirements for the Authority Project Manager to accept the report.</p>
RQ3	<p>The Contractor shall conduct testing on two surviving submodules delivered under Phase 2 contract CCDT593, not utilised under RQ2, to determine the [REDACTED] cell failure under discharge and overcharging conditions, to characterise the safe thermal operating envelope.</p>	<p>Delivery of Thermal Test Report characterising the effect on the cells of operation under high temperatures; specifically overcharging and discharging. The temperature at which [REDACTED] the cell performance degrades should be documented.</p>	<p>By the end of Month 1, to enable the results to inform any decision regarding module cooling under RQ1.</p>	<p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8, the Deliverable(s) description and the Thermal Test Report requirements of the SOTR at Schedule 11.</p> <p>The report must cover all areas described in the Deliverable(s) description for RQ3.</p>
RQ4	The Contractor shall support SDA	i) Provision of technical advice and Subject Matter Expert (SME)	Ad-hoc support as required, specific	The Contractor shall demonstrate as part of the

	activities.	<p>support required for but not limited to the following activities:</p> <ul style="list-style-type: none"> - Safety Assurance - Land Based Test Site planning - Benefits Analysis - Development of final Battery System Specification 	<p>dates to be agreed between the Authority PM and PMB. This shall include maintenance of the Safety and Environmental Management Plan, as a “live” document.</p>	<p>Project Management Progress reports the SME support it has provided to the Authority over the applicable monthly period.</p> <p>Supporting evidence of emails, documentation or attendance at meetings should be submitted to the Authority Project Manager, where required.</p> <p>The Authority Project Manager shall provide confirmation that agreed support to SDA activities has been delivered.</p>
		<p>ii) Delivery of a Land Based Test Site qualification test plan</p>	<p>To be delivered by the end of Month 1.</p>	<p>The plan shall make detailed recommendations for the specific testing which will be required to provide the evidence needed to meet the requirements of the full Safety Case Report and to allow the MoD to develop a work scope for a Land Based Test Site Contractor.</p> <p>The evidence derived from Land Based Testing must be sufficient without further work to put forward for approval for installation onto a platform.</p> <p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure</p>

				at Schedule 8.
		iii) Delivery of a Pre-Construction Safety Report	To be delivered by the end of Month 9.	<p>Pre-Construction Safety Report must comply with the most recent issue of the Mod Safety White book and DefStan 00-56 –Safety Management Requirements for Defence Systems.</p> <p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8.</p>
RQ5	The Contractor shall deliver monthly Project Management Progress reports.	Delivery of monthly Project Management Progress Report using “TDP Tracking Template” to include costs, progress and risks against the stated requirement and deliverables.	Monthly within 5 working days from the end of each calendar month.	<p>Project Management Progress Report must use TDP Tracking Template” and include costs, progress and risks against the stated requirement and deliverables.</p> <p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8.</p>
RQ6	The Contractor shall deliver Quarterly progress workshops.	To review progress, receive customer direction or advise of relevant risks which need to be raised; the Contractor shall provide a written record of each	Every three months for the duration of Phase 3a; minutes within 10 working days of workshop.	Contractor has conducted workshop in accordance with RQ7.

		workshop.		<p>Minutes to include a records of attendance, key decisions and actions</p> <p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8.</p>
RQ7	<p>The Contractor shall subcontract Thornton Tomasetti Defence Ltd (TTDL) to conduct shock testing and analyse results.</p> <p>The Contractor shall work collaboratively with TTDL where required, to refine the shock design of the module and mounts and apply TTDL shock modelling.</p> <p>The Contractor shall use the outputs of the shock testing and analysis to inform deliverable RQ1ii.</p>	<p>Deliver modules to TTDL for shock testing and qualification as specified by the Shock Qualification Plan which will be delivered by TTDL.</p> <p>Ensure TTDL conduct shock barge testing and analysis for production standard modules, together with shock modelling and analysis of the full battery system.</p>	To be delivered by the end of Month 8.	<p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8.</p> <p>The Authority Project Manager must be invited to witness the shock testing event.</p> <p>The Shock test report and associated documentation must meet the Special Report – Shock requirements of the SOTR at Schedule 11.</p> <p>The Authority Project Manager will review and accept or reject reports generated by TTDL in accordance with the Acceptance Procedure at Schedule 8.</p>
RQ8	The Contractor shall deliver [REDACTED] production standard modules for Electromagnetic Interference (EMI) and Electromagnetic Compatibility	Results of EMI/EMC pre-qualification activities.	To be delivered by the end of Month 9.	The Authority PM will review and accept the results of EMI/EMC pre-qualification. Reported results must give

	(EMC) pre-qualification activities and Conduct EMI/EMC pre-qualification activities including arranging the involvement of an appropriate test house and Analyse results.			confidence that the system as designed will achieve qualification in accordance with the Special report – EMC/EMI requirements of the SOTR at Schedule 11.
RQ9	The Contractor shall deliver a Manufacturing Readiness Review (MRR) with SDA and key stakeholders, following transfer of module construction to the UK and qualification of production standard module.	Delivery of MRR, provision of supporting documents ten days in advance, and minutes within ten working days.	To be delivered by the end of Month 7.	<p>Authority representatives will attend the MMR.</p> <p>Documentation provided by the Contractor as an output from the MMR must demonstrate validate the production process used to produce the initial [REDACTED] modules is acceptable for further production.</p> <p>Minutes to include a records of attendance, key decisions and actions</p> <p>The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8 in accordance with the requirements of the SOTR at Schedule 11.</p>
RQ10	The Contract shall deliver a Close Out Review with SDA and key stakeholders, and final report.	Delivery of final report detailing the design and compliance with the technical requirements in SOTR at Schedule 11 ten working days prior to the Close Out Review. Delivery of the Close Out review, and provision of minutes within ten working days.	To delivered prior to end of Month 10.	The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8.

				<p>Minutes to include a records of attendance, key decisions and actions</p> <p>Final to report to include an overarching summary of phase 3a activity, detailing how the requirements have been achieved and any recommendations for the future. This may be delivered as a slide pack.</p> <p>The Authority PM will confirm required attendance and participation has been delivered. The minutes will be reviewed and accepted in accordance with the Acceptance Procedure at Schedule 8.</p>
RQ11	The Contractor shall supply a Technical Data Pack, relating to the NiZn cell design.	The technical data pack (TDP) relating to the NiZn cell design shall include all that information that a competent third party would need in order to complete the Phase 3a and 3b requirement of this Contract (including completing the Contract Articles; and remedying the defective Contract Articles under warranty). The TDP shall clearly indicate where any technical data and the associated Intellectual Property Rights are owned by a third party.	To be delivered by the end of Week 4.	The Authority Project Manager will review and accept or reject deliverable reports, designs or documentation in accordance with the Acceptance Procedure at Schedule 8.

Redacted in accordance with Schedule 5, Contractor's Commercially Sensitive Information

Schedule 10 – Milestone Schedule

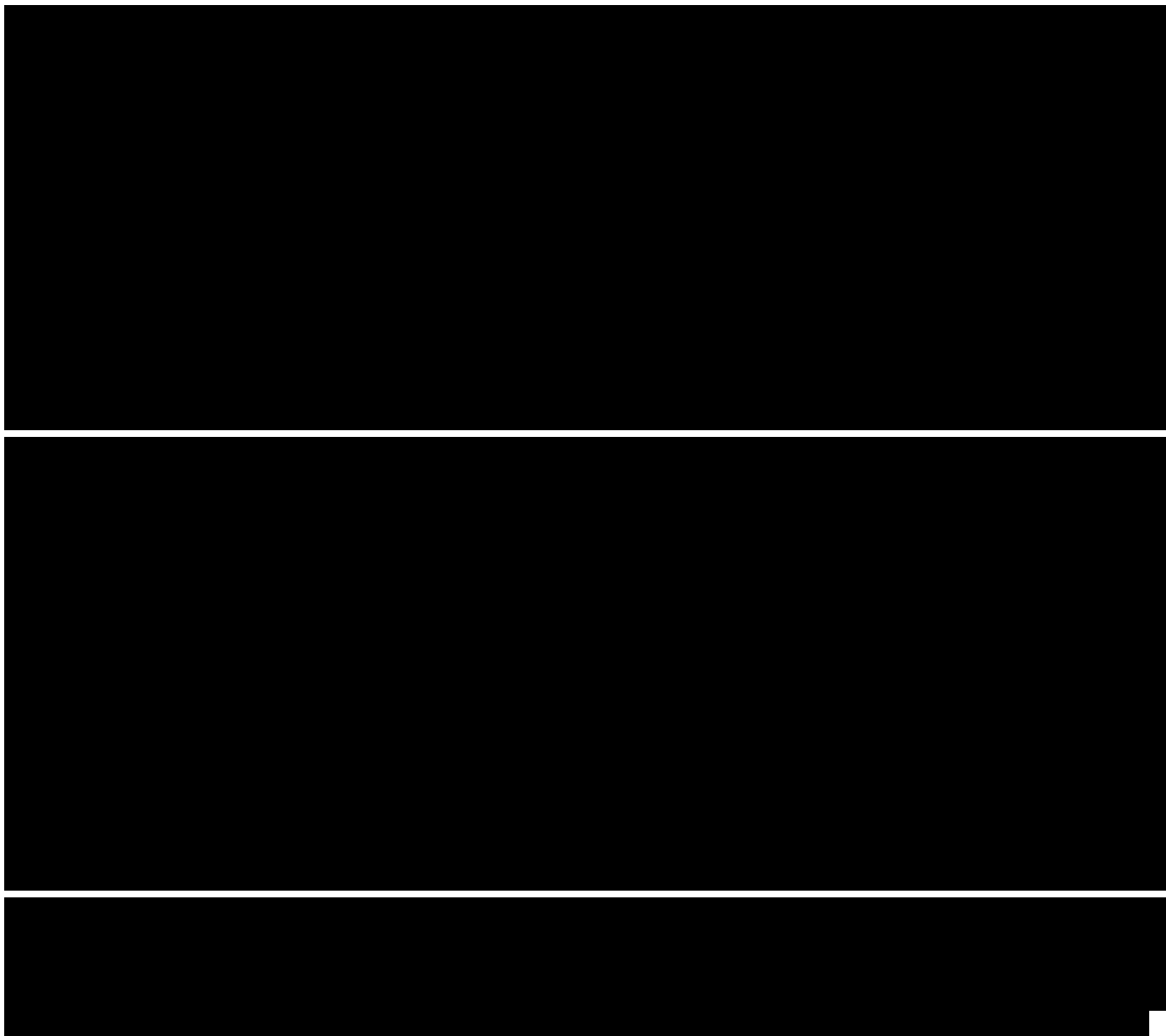
Schedule 10 – Milestone Schedule

#	Milestone	ED+(Wks)	Deliverables
M.1	Contract Kick-off	4	<ul style="list-style-type: none"> Contract Kick-off Meeting Agendas/Minutes Technical Data Pack Bank Guarantee
M.2	LBTS plan	4	<ul style="list-style-type: none"> Land Based Test Site Qualification Test Plan (RQ5ii)
M.3	Prototype Module Design complete	14	<ul style="list-style-type: none"> Updated System Specification (RQ1a) Updated Module Specification (RQ1a) Shock design report (RQ8) Critical Design Review (RQ1a) Supporting design reports (RQ1a) Preliminary BSF Design Report (RQ1b) Phase 2 cells long term cycling report (RQ2) Monthly Project Management Progress Reports (RQ6) Quarterly progress workshop (RQ7)
M.4	Module MTR complete	28	<ul style="list-style-type: none"> BSF design report (RQ1b) Manufacturing data pack (RQ1a) Manufacturing Readiness Review (RQ10) modules (RQ1a) Factory Acceptance Reports (R1a) Phase 2 cells long term cycling report (RQ2) Monthly Project Management Progress Reports (RQ6) Quarterly progress workshop (RQ7)
M.5	Phase 3a complete	44	<ul style="list-style-type: none"> Shock Test report (RQ8) EMI evaluation report (RQ9) Submodule Thermal Test report (RQ3) Updated Safety and Environmental Management Plan (RQ5i) Pre-Construction Safety Report (RQ5iii) modules (R1a) Factory Acceptance Reports (R1a)

#	Milestone	ED+(Wks)	Deliverables
			<ul style="list-style-type: none">• Phase 2 cells long term cycling report (RQ2)• Final Report (RQ11)• Formal closeout meeting (RQ11)• Monthly Project Management Progress Reports (RQ6)• Quarterly progress workshop (RQ7)

Redacted in accordance with Schedule 5, Contractor's Commercially Sensitive Information

Schedule 11 - Statement of Technical Requirements



Redacted in accordance with Military Sensitive Technical Information

Documentation Description

Document name	Description	Requirement cross-reference	Author
Design Report	A report describing the design of the battery, and relating specific design features to the Safety and Functional requirements.	1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19a, 20, 21, 23, 25, 26, 27	Contractor
Factory Acceptance Test Report	A report recording the conduct and results of tests to demonstrate that the design intent has been achieved.	1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 24	Contractor
Long Term Cycling Reports	Quarterly reports detailing the ongoing condition and performance of Phase 2 modules.	3, 6, 22	Contractor
Thermal Test Report	A report describing the conduct and results of experiments to determine the performance and degradation of cells discharging and overcharging in high ambient temperature.	6	Contractor
Special Report - Shock	Two reports, one to provide expert design support and one describing the conduct and results of shock testing on a representative reduced scale system.	23	Sub-contractor
Special report - Reliability	Documentation of calculations to predict the reliability of operation on demand of the battery- to form part of Phase 3b work, as will dependent on outcome of long term cycling, Land Based Testing.	7	Contractor
Special report – EMC/EMI	This report must give confidence that the system as designed will achieve EMC/EMI qualification.	24	Contractor

Schedule 12 – Security Aspect Letter

Submarine
Delivery Agency

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Redacted under General Data Protection Regulation (GDPR) – Personal Data

Date of Issue: 10/09/2021

For the attention of:

Security Controller
PMB Defence Engineering Pty Ltd
655 Mersey Road North,
Osborne,
Australia
SA 5017

**Contract No 701577554 SECURITY ASPECTS LETTER FOR SUBMARINE MAIN BATTERY TDP
PHASE 3A - FINAL MODULE DESIGN**

1. On behalf of the Secretary of State for Defence, I hereby give you notice of the information or assets connected with, or arising from, the referenced Contract that constitute classified material.
2. Aspects that constitute OFFICIAL-SENSITIVE for the purpose of DEFCON 660 are specified below. These aspects must be fully safeguarded. The enclosed Security Condition at Annex A and Annex B outlines the minimum measures required to safeguard OFFICIAL-SENSITIVE assets and information.

ASPECTS	CLASSIFICATION
All information generated in the execution of the contract that may relate to the Submarine Programme – e.g. specific delivery information that relates to a particular boat.	OFFICIAL-SENSITIVE

All technical information identified OFFICIAL-SENSITIVE generated under this contract, or supplied by SDA to assist in the execution of this contract.	OFFICIAL-SENSITIVE
All correspondence containing the descriptor COMMERCIAL.	OFFICIAL-SENSITIVE-COMMERCIAL

3. Your attention is drawn to the provisions of the Official Secrets Act 1911-1989 in general, and specifically to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989). In particular you should take all reasonable steps to make sure that all individuals employed on any work in connection with this Contract have notice of the above specified aspects and that the aforementioned statutory provisions apply to them and will continue to apply after completion or earlier termination of the contract

4. Will you please confirm that:

a. This definition of the classified aspects of the referenced Contract has been brought to the attention of the person directly responsible for security of classified material.

b. The definition is fully understood.

c. Measures can, and will, be taken to safeguard the classified aspects identified herein in accordance with applicable national laws and regulations. The requirement and obligations set out above and in any contractual document can and will be met and that the classified information shall be protected in accordance with applicable national laws and regulations.

d. All employees of the company who will have access to classified information have either signed the OSA Declaration Form in duplicate and one copy is retained by the Company Security Officer or have otherwise been informed that the provisions of the OSA apply to all classified information and assets associated with this contract.

5. If you have any difficulty either in interpreting this definition of the classified aspects or in safeguarding them, will you please let me know immediately.

6. Classified Information associated with this Contract must not be published or communicated to anyone without the approval of the MOD Contracting Authority.

7. Any access to classified information or assets on MOD premises that may be needed will be subject to MOD security regulations under the direction of the MOD Project Officer in accordance with DEFCON 76.

Yours faithfully

[Redacted signature block]

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Copy via email to:

[DES PSyA-SecurityAdviceCentre \(MULTIUSER\)](#)

[SPO DSR-STInd \(MULTIUSER\)](#)

[ISS Des-DAIS-SRAAcc4-IA](#)

From:

Security Controller
PMB Defence Engineering Pty Ltd
655 Mersey Road North,
Osborne,
Australia
SA 5017

To:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Redacted under General Data Protection Regulation (GDPR) – Personal Data

Contract No 701577554 SECURITY ASPECTS LETTER FOR SUBMARINE MAIN BATTERY TDP PHASE 3A - FINAL MODULE DESIGN

Receipt of the above SAL is acknowledged. I confirm that:

- a. The definitions of the Protected Markings (PM), Official, Official-Sensitive and the Descriptor Commercial have been brought to the attention of the person directly responsible for the security of this contract.
- b. The definitions and wider security requirements are understood in context to the references quoted in the SAL.
- c. Measures can and will be taken to safeguard the PM.
- d. I have read and understood HMG Security Policy Framework, dated May 2018
- e. All conditions and requirements in this SAL will be complied with and further briefed as necessary to individuals working on this contract/task and to subcontractors.

Signed by:on Date:

Print Name:

MOD

MOD Purchase Contract (CPA) 701577554

Job Title

Schedule 12 – Annex A – Australian Security Conditions**AUSTRALIAN - CONTRACT SECURITY CLAUSE****November 2018****DEFINITIONS**

1. The provisions of this Clause are based upon the security Arrangement between the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland and The Department of Defence of Australia concerning the Protection of Defence Classified Information, dated 9 November 2018, and will apply to the extent that this Contract involves access to or possession of information to which a security classification has been assigned by the Government of the United Kingdom.

2. The term "**classified matter**" in this Clause includes information, documents and material, which are subject to a security grading as defined in paragraphs 4/5 below, irrespective of whether it is transmitted orally, electronically in writing or by the handing over of material. For the purpose of this Clause the word document means letter, note, minute, report, memorandum, signal/message, sketch, photograph, film, map, chart, plan, notebook, stencil, carbon, typewriter ribbon etc or other form of recorded information (e.g. tape recording, magnetic recording, punched card, tape).

3. The term "**Authority**" means the Contracting Authority. The term "**Designated Security Authority (DSA)/Competent Security Authority (CSA)**" means:

United KingdomDSA – Security Policy

Ministry of Defence, Security Policy & Operations - Directorate of Security and Resilience (SPO-DSR-STInd), Level 4, Zone B, Main Building, Whitehall, London SW1A 2HB.

CSA – Security Implementation

Ministry of Defence, Defence Equipment & Support, PSyA - Security Advice Centre (DE&S PSyA-SAC), Poplar -1, #2004, MOD Abbey Wood South, Bristol BS34 8JH

AustraliaDSA & CSA – Security Policy/Implementation

First Assistant Secretary Defence Security & Vetting Service, Department of Defence, Campbell Park Offices, PO Box 7951, Canberra BC ACT 2610, Australia

SECURITY CLASSIFICATION

4. The Authority shall issue a **Security Aspects Letter** that shall define the UK classified matter that is furnished, or which is to be developed, under this Contract. The Contractor shall mark all classified documents that it originates or copies during the course of the Contract with the appropriate security classification.

5. The Contractor shall protect UK classified matter under this Contract to the same standards that it would protect its own national matter of an equivalent classification. The equivalent classification markings are:

UNITED KINGDOM**AUSTRALIA****UK TOP SECRET****TOP SECRET****UK SECRET****SECRET****NO EQUIVALENT****CONFIDENTIAL****UK OFFICIAL-SENSITIVE1****PROTECTED**

(1 Release of UK Official and UK Official-Sensitive material should be supported with the attached "Security Conditions" Annex.)

6. The Contractor shall comply with any security instructions issued by its **DSA/CSA**.

7. The Authority shall keep current all security classifications and shall inform the Contractor of any changes thereto.

RESTRICTIONS ON USE

8. UK classified matter furnished or developed in the performance of this Contract shall not be used for any other purpose without the express written authorisation of the Authority responsible for the Contract.

9. The Contractor shall not disclose the UK classified matter to any person, other than those whom it has been determined need-to-know and are employed or engaged on the Contract.

10. The Contractor shall not disclose UK classified matter or permit it to be disclosed to anyone who is not currently authorised for access by its own DSA/CSA.

SUB-CONTRACTS

11. The Contractor agrees to insert security provisions, which conform substantially to the language of this Clause, in all sub-contracts, which involve access to UK classified matter. In the event the Contractor proposes to award a sub-contract to another Contractor, prior permission must be obtained from the Authority.

12. The Contractor also agrees that it shall determine that any sub-contractor it proposes for the furnishing of supplies and services which will involve access to UK classified matter in the Contractor's custody has:

a. If located in **Australia**, hold a current Australian Facility Security Clearance at the appropriate level and the ability to properly safeguard UK classified matter prior to being afforded such access.

b. If located in any other country, has been approved by the Authority and the UK CSA to have access to its classified matter prior to being afforded such access and that the sub-Contractor's facility has been granted a Facility Security Clearance at the appropriate level by its own DSA and the ability to properly safeguard classified matter prior to being afforded access.

13. The Contractor should inform the sub-contractor in writing of the security aspects of the sub-contract and of the security classification in accordance with paragraphs 4 & 5 above.

TRANSMISSION OF CLASSIFIED MATTER

14. The Contractor shall transmit classified matter between Australia and the United Kingdom only in accordance with the instructions of its DSA/CSA. In any event, transmission of matter classified UK SECRET or above from one country to another will be arranged through Government-to-Government diplomatic channels. Classified matter at UK OFFICIAL-SENSITIVE level will be transmitted in accordance with national security laws and regulations.

VISITS

15. The Contractor shall allow visits by representatives of the Contracting Authority and permit access to the classified matter of this Contract. Such visits must be for official purposes and prior to arrival, confirmation of the visitor's personal security clearance must be provided directly to the facility to be visited and to the host DSA/CSA. Visitors must be in possession of an ID card or passport for presentation to the security authorities.

LOSS, COMPROMISE AND CONTRAVENTION

16. In the event of loss, compromise or suspicion of compromise of UK classified matter the Authority, UK CSA, the Contractor's DSA/CSA as defined in paragraph 3 above, will be informed at once by the Contractor and an immediate investigation will be carried out by the Contractor's DSA/CSA into the circumstances of the loss or compromise and appropriate action taken.

17. Any contravention against security will be dealt with under Australian national security laws and regulations.

TERMINATION

18. The Authority shall have the right to terminate the Contract if in the opinion of the Authority the Contractor has not complied with this Contract Security Clause. Without prejudice to residual claims after completion or termination of the Contract, the Contractor shall return all classified documents and material to the Authority.

19. The Contractors' obligation under this security Clause shall continue to apply after the completion or termination of the Contract.

Schedule 12 – Annex B – UK Security Conditions

UK OFFICIAL and UK OFFICIAL-SENSITIVE Security Conditions for Classified Contracts

Purpose

1. The document provides guidance for Contractors where information and material provided to or generated by the Contractor is classified as UK OFFICIAL and UK OFFICIAL-SENSITIVE. Where the measures requested below cannot be achieved or are not well understood, further advice should be sought from the **Defence Security and Vetting Service, Australian Department of Defence (DS&VS), Campbell Park Offices, PO Box 7951, Canberra BC ACT 2610, Australia.**

Definitions

2. The term “**Authority**” for the purposes of this Annex means a UK Ministry of Defence (MOD) official acting on behalf of the Secretary of State for Defence.
3. The term “**Contract**” for the purposes of this Annex means an agreement between two or more parties creating and defining enforceable rights and obligations under domestic law between those parties.
4. The term “**Contractor**” for the purposes of this Annex means any individual, organisation, or other entity, including sub-Contractors, who is negotiating or has entered into a Classified Contract.
5. The term “**Need-to-Know**” for the purposes of this Annex means the principle that access to Classified Information should be limited those who need to use such information in order to perform their official or contracted duties.
6. The term “**Service Provider**” for the purposes of this Annex means a company that provides services to a contractor which may enable that company to access Classified Information. Examples of this include managed service providers of information infrastructure.

Facility Security Clearance

7. The UK does not require a Facility Security Clearance (FSC) to be held by Australian facilities handling UK information classified as UK OFFICIAL-SENSITIVE.

Security Grading

8. All aspects associated with Contracts involving the provision or generation of information or material classified as UK OFFICIAL are to be classified UK OFFICIAL. Some aspects are more sensitive and are classified as UK OFFICIAL-SENSITIVE. The Security Aspects Letter, issued by the Authority specifically defines the UK OFFICIAL-SENSITIVE information that is furnished to the Contractor, or which is to be developed by it, under this Contract. The Contractor will mark all UK OFFICIAL-SENSITIVE documents which he or she originates or copies during the Contract clearly with the UK OFFICIAL-SENSITIVE classification.

Security Conditions

9. The Contractor will take all reasonable steps to make sure that all individuals employed on any work in connection

with the Contract have notice that these provisions apply to them and will continue so to apply after the completion or earlier termination of the Contract.

Protection of UK OFFICIAL and UK OFFICIAL-SENSITIVE Information

10. The Contractor must protect UK OFFICIAL and UK OFFICIAL-SENSITIVE information provided to or generated by it in accordance with the requirements detailed in this Security Condition and any other conditions that may be specified by the Authority. The Contractor will take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.

11. Where Contractors are asked to apply Industry Security Notice (ISN) 2017/01 requirements to industry owned IT and communication systems used to store, process or generate UK Ministry of Defence information (including those systems containing UK OFFICIAL and/or UK OFFICIAL-SENSITIVE information) they will contact and consult with the Australian Department of Defence, DS&VS on these requirements. ISN 2017/01 details UK Ministry of Defence Assurance and Risk Tool (DART) registration, IT security accreditation processes, risk assessment and risk management requirements. The ISN is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594320/DART_ISN_-_V2_3.pdf

12. All UK OFFICIAL and UK OFFICIAL-SENSITIVE material including documents, ICT media and other material must be physically secured to prevent unauthorised access. When not in use UK OFFICIAL and UK OFFICIAL-SENSITIVE documents/material must be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE documents/material must be stored under lock and key and be placed in a lockable room, cabinets, drawers or safe and the keys/combinations must be subject to a level of control.

13. Disclosure of UK OFFICIAL and UK OFFICIAL-SENSITIVE information must be strictly controlled in accordance with the "Need-to-Know" principle. Except with the written consent of the Authority, the Contractor must not disclose the Contract or any provision thereof to any person other than to a person directly employed by the Contractor or sub-Contractor, or Service Provider.

14. Except with the consent in writing of the Authority the Contractor is not to make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract, and, save as provided for in paragraph 13 above, the Contractor must not make use of any information or material, or part thereof, for any other purpose.

15. Subject to any intellectual property rights of third parties, nothing in this Security Condition restricts the Contractor from using any specifications, plans, drawings and other documents generated outside of this Contract.

16. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 38 below.

Access

17. Access to UK OFFICIAL and UK OFFICIAL-SENSITIVE information will be confined to those individuals who have a Need-to-Know, have been made aware of the requirement to protect the information and whose access is essential for the purpose of their duties.

18. The Contractor must ensure that all individuals requiring access to UK OFFICIAL-SENSITIVE information have undergone basic recruitment checks. This should include establishing proof of identity; confirming that they satisfy all

legal requirements for employment by the Contractor; and verification of their employment record. Criminal record checks should also be undertaken where permissible under national/local laws, regulations and policies. This is in keeping with the core principles set out in the UK Government (HMG) Baseline Personnel Security Standard (BPSS).

Hard Copy Distribution

19. UK OFFICIAL and UK OFFICIAL-SENSITIVE documents may be distributed, both within and outside company premises, only in such a way as to make sure that no unauthorised person has access. It may be sent by ordinary post in a single envelope. The words UK OFFICIAL or UK OFFICIAL-SENSITIVE must not appear on the envelope. The envelope should bear a stamp or marking that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.

20. Additional advice on the distribution of UK OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of UK OFFICIAL-SENSITIVE hardware can be sought from the Authority, and/or from DS&VS.

Electronic Communication and Telephony and Facsimile Services

21. UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIAL-SENSITIVE information must normally only be transmitted over the internet encrypted using either a CESG Commercial Product Assurance (CPA) cryptographic product or a MOD approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the required TLS implementation are available at:

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

Details of the CPA scheme are available at:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

22. Exceptionally, in urgent cases UK OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so but only with the prior approval of the Authority. However, it must only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the Authority requires. Such limitations including any regarding publication, further circulation or other handling instructions will be clearly identified in the email sent with the material.

23. UK OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the country of the Contractor and overseas. UK OFFICIAL-SENSITIVE information may be discussed on fixed and mobile telephones only where there is a strong business need to do so and only with the prior approval of the Authority.

24. UK OFFICIAL information may be faxed to recipients located both within the country of the Contractor and overseas, however UK OFFICIAL-SENSITIVE information may be faxed only where there is a strong business need to do so and only with the prior approval of the Authority.

Use of Information Systems

25. The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here in specific detail; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.

26. The Contractor must ensure **10 Steps to Cyber Security** is applied in a proportionate manner for each IT and communications system storing, processing or generating MOD UK OFFICIAL or UK OFFICIAL-SENSITIVE information. 10 Steps to Cyber Security is available at:

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

The Contractor is to ensure competent personnel apply 10 Steps to Cyber Security.

27. As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data.

28. Within the framework of the 10 Steps to Cyber Security, the following describes the minimum security requirements for processing and accessing UK OFFICIAL-SENSITIVE information on IT systems:

a. Access. Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “least privilege” will be applied to System Administrators. Users of the IT System (Administrators) should not conduct ‘standard’ User functions using their privileged accounts.

b. Identification and Authentication (ID&A). All systems are to have the following functionality:

(1). Up-to-date lists of authorised users.

(2). Positive identification of all users at the start of each processing session.

c. Passwords. Passwords are part of most ID&A, Security Measures. Passwords are to be “strong” using an appropriate method to achieve this, for example, including numeric and “special” characters (if permitted by the system) as well as alphabetic characters.

d. Internal Access Control. All systems are to have Internal Access Controls to prevent unauthorised users from accessing or modifying the data.

e. Data Transmission. Unless the Authority authorises otherwise, UK OFFICIAL-SENSITIVE information may only be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in paragraph 21 above.

f. Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.

(1). The following events are to always be recorded:

a). All log on attempts whether successful or failed,

b). Log off (including time out where applicable),

c). The creation, deletion or alteration of access rights and privileges,

d). The creation, deletion or alteration of passwords,

(2). For each of the events listed above, the following information is to be recorded:

a). Type of event,

b). User ID,

c). Date & Time,

d). Device ID,

The accounting records are to have a facility to provide the System Manager with a hard copy of all or selected activity. There also must be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a Need-to-Know.

If the operating system is unable to provide this then the equipment must be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

g. Integrity & Availability. The following supporting measures are to be implemented:

(1). Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations),

(2). Defined Business Contingency Plan,

(3). Data backup with local storage,

(4). Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),

(5). Operating systems, applications and firmware should be supported,

(6). Patching of Operating Systems and Applications used are to be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.

h. Logon Banners. Wherever possible, a "Logon Banner" will be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring.

A suggested format for the text (depending on national legal requirements) could be:

"Unauthorised access to this computer system may constitute a criminal offence"

i. Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for

some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal. November 2018

j. Internet Connections. Computer systems must not be connected direct to the Internet or “un-trusted” systems unless protected by a firewall (a software based personal firewall is the minimum but risk assessment and management must be used to identify whether this is sufficient).

k. Disposal. Before IT storage media (e.g. disks) are disposed of, an erasure product must be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

Laptops

29. Laptops holding any UK MOD supplied or Contractor generated UK OFFICIAL-SENSITIVE information are to be encrypted using a CPA product or equivalent as described in paragraph 21 above.

30. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites. For the avoidance of doubt the term “drives” includes all removable, recordable media e.g. memory sticks, compact flash, recordable optical media (e.g. CDs and DVDs), floppy discs and external hard drives.

31. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.

32. Portable CIS devices holding MOD data are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

Loss and Incident Reporting

33. The Contractor is to immediately report the loss of any UK OFFICIAL or UK OFFICIAL-SENSITIVE information to the Authority and to DS&VS (Security Incident Centre).

34. Accordingly, in accordance with Industry Security Notice 2014/02 as may be subsequently updated at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/293480/ISN2014_02_Incident_Reporting.pdf

any security incident involving any UK MOD owned, processed or Contractor generated UK OFFICIAL or UK OFFICIAL-SENSITIVE information is to be immediately reported to the UK MOD Defence Industry Warning, Advice and Reporting Point (WARP), within the Joint Security Co-ordination Centre (JSyCC). This will assist the JSyCC in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the UK MOD's Chief Information Officer (CIO) and, as appropriate, the company concerned. The UK MOD WARP will also advise the Contractor what further action is required to be undertaken.

JSyCC WARP Contact Details Email: For those with access to the RLI: JSyCCOperations@mod.gov.uk- Email: For those without access to the RLI: CIO-DSAS-SyCCOperations@mod.gov.uk

Telephone: Working Hours: +44 (0)30 677 021 187

Out of Hours/Duty Officer Phone: +44(0)7768 558863

Fax: +44(0)1480 446328

Mail: Joint Security Co-ordination Centre (JSyCC), X007 Bazalgette Pavilion, RAF Wyton, Huntingdon, Cambs PE28 2EA.

DS&VS Security Incident Centre Contact Details Email: Security.IncidentCentre@defence.gov.au

Telephone: Working Hours: (02) 6266 3331

Out of Hours/Duty Officer Phone: 0416 060 347

Sub-Contracts

35. Where a Contractor has sub-contracted any elements of a Contract to a sub-Contractor within Australia or to Contractors located in the United Kingdom, such sub-Contracts will be notified to the Authority. When sub-contracting to a sub-Contractor located in either Australia or to the UK, the Contractor must ensure that these Security Conditions are incorporated within the sub-Contract document. The prior approval of the Authority is to be obtained should the Contractor wish to sub-Contract any UK OFFICIAL-SENSITIVE elements of the Contract to a sub-Contractor facility located in another (Third Party) country. The first page of Appendix 5 (MOD Form 1686 (F1686)) of the Security Policy Framework Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 can be found at Appendix 5 at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710891/2018_Ma_y_Contractual_process.pdf

36. If the sub-Contract is approved, the Authority will provide the Contractor with the Security Conditions that should be incorporated within the sub-Contract document.

Publicity Material

37. Contractors wishing to release any publicity material or display hardware that arises from a Contract to which these Security Conditions apply must seek the prior approval of the Authority. Publicity material includes open publication in the Contractor's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the UK MOD, the military services or any other government department.

Destruction

38. As soon as no longer required, UK OFFICIAL and UK OFFICIAL-SENSITIVE information/material must be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. November 2018

Advice is to be sought from the Authority when information/material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Contractor to be necessary or desirable. Unwanted UK OFFICIAL-SENSITIVE information/material which cannot be destroyed in such a way is to be returned to the Authority.

Interpretation/Guidance

39. Advice regarding the interpretation of the above requirements should be sought from the Authority or from DS&VS.

40. Further requirements, advice and guidance for the protection of MOD information at the level of UK OFFICIAL-SENSITIVE may be found in Industry Security Notices at:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

Audit

41. Where considered necessary by the Authority or by DS&VS, the Contractor is to provide evidence of compliance with these Security Conditions and/or permit the inspection of the Contractors processes and facilities by representatives of the national security authorities of the Authority or DS&VS to ensure compliance with these

Schedule 13 – Contract Data Requirements (DEFFORM 315)

1. <u>Contract Number</u> 701577554	2. <u>CDR Number</u> CDR001	3. <u>Data Category</u> Manufacture	4. <u>Contract Delivery Date</u> November 2021 + 12 months
5. <u>Equipment/Equipment Subsystem Description</u> NiZn Submarine Main Battery Technology Demonstrator Project		6. <u>General Description of Data Deliverable</u> Manufacturing Data Pack in accordance with UK DID MDP (Edn 2/98)	
7. <u>Purpose for which data is required</u> Assessment of modules against requirements. Development of supporting safety case. To provide evidence to inform future investment decisions.		8. <u>Intellectual Property Rights</u> a. <u>Applicable DEFCONs</u> DEFCON 14 (Edn. 06/21) - Inventions And Designs Crown Rights And Ownership Of Patents And Registered Designs DEFCON 15 (Edn. 06/21) - Design Rights And Rights To Use Design Information DEFCON 21 (Edn. 06/21) - Retention Of Records DEFCON 90 (Edn. 06/21) – Copyright DEFCON 649 (Edn. 12/16) - Vesting b. <u>Special IP Conditions</u> Condition 5. Provision of background Intellectual Property and technical data	

9. <u>Update/Further Submission Requirements</u>	
None	
10. <u>Medium of Delivery</u>	11. <u>Number of Copies</u>
Electronic	1

Schedule 14 – Commercial Expiation Agreement (CEA)**Specimen Agreement for Hardware Where Percentage Levy Rates Apply**

Schedule 14 to Contract No 701577554

Ministry of Defence

Commercial Exploitation of Defence Equipment Developed at Government Expense

CEL Agreement No. CEA/0742/21/22

Delivery Team Details:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Redacted under General Data Protection Regulation (GDPR) – Personal Data

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) 701577554 between the Ministry and the Contractor relating for Submarine Main Battery TDP Phase 3a - Final Module Design;
- 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 its 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 them by a third party for incorporation in the Contract Article, but only if such 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 3.75 per cent of the Contractor's selling price.
- 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 its 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 equipment 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, refurnish, 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 its own research or development purposes or for its 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 its selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice its 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 Delivery 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 its customer or otherwise which it 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 Delivery 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. in the case of licences, and in any other case in which levy is based on gross receipts by the Contractor in respect of an agreement relating to Contract Articles, on the date of receipt by the Contractor of each payment;

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 Defence Business Services Finance-Commercial Exploitation Agreement Team, 1st Floor, Walker House, Exchange Flags, Liverpool L2 3YL, two copies of a statement (see Clause 22) at 12 monthly (6 monthly or 12 monthly) 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) computed 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 Delivery 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 Defence Business Services Finance-Commercial Exploitation Arrangement Team (DBSFin-CEA-Team@mod.uk). 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 its Auditors and shall be forwarded to Defence Business Services Finance-Commercial Exploitation Arrangement Team (DBSFin-CEA-Team@mod.uk) 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 its 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.

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 Exports Team, Security Policy and Operations, MOD, 4.C, Whitehall, London SW1A 2HB, on a case by case basis before making offers to sell Contract Articles overseas.

Signed: 
(MOD Commercial)

Signed:
(Contractor)

Date: 26 November 2021

Date:

Redacted under General Data Protection Regulation (GDPR) – Personal Data

DEFFORM 111**Appendix - Addresses and Other Information****1. Commercial Officer**

[Redacted]
[Redacted]
[Redacted]

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

[Redacted]
[Redacted]
[Redacted]

Redacted under General Data Protection Regulation (GDPR) – Personal Data

3. Packaging Design Authority Organisation & point of contact:

(Where no address is shown please contact the Project Team in Box 2)

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

Branch/Name:



(b) U.I.N.

5. Drawings/Specifications are available from**6. Intentionally Blank****7. Quality Assurance Representative:**

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.gateway.isg-r.r.mil.uk/index.html> [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 as follows:

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

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 Arcott, 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.