

OFFICIAL

**DATED** \_\_\_\_\_ **202[•]**

**THE SECRETARY OF STATE FOR (1)**  
**DEFENCE**

**and**

**[CONTRACTOR [LIMITED]] (2)**

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**Royal Air Force Centre of Aviation  
Medicine Relocation  
Contract Number 701577386**

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THIS CONTRACT is made on

202[•]

### BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”, also referred to as the “**Employer**” in Part 1); and
- (2) **[CONTRACTOR [LIMITED]]**, [registered in England (**number [•]**), whose registered office is at [•]]/[of [•]] (the “**Contractor**”, also referred to as the “**Contractor**” in Part 1)<sup>1</sup>.

### BACKGROUND:

- (A) On 15 November 2021 the Authority advertised the “**Contract Notice**”, publication reference 2021/S 000-028533, inviting prospective suppliers to submit proposals for the relocation of the Royal Air Force (RAF) Centre of Aviation Medicine (CAM) from RAF Henlow to RAF Cranwell into a new purpose-built facility to be designed and built by the Contractor, the relocation of the existing capability from RAF Henlow including the refurbishment of certain existing equipment and certain equipment to be procured as new, and support for equipment to meet maintenance standards following relocation to the new facility.
- (B) On the basis of the Contractor’s response to the advertisement and a subsequent tender process, the Authority selected the Contractor as its preferred supplier.
- (C) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- (D) This Contract is divided into two (2) Parts as follows:
  - 1) Based on the NEC Option C with Z Clauses, Part 1, Stage 1 includes Early Contractor Involvement and Stage 2 includes the detailed design and build of RAF CAM equipment and infrastructure (“**Part 1**”); and
  - 2) Part 2, which governs equipment maintenance and support following Completion (“**Part 2**”),  
  
(and includes any consolidated version arising under Clause 8 (*Amendments to Qualifying Defence Contracts – Consolidated Version*)).
- (E) The Contractor’s prices for performing Part 1 and Part 2 of this Contract are summarised in Appendix 1 (*Schedule of Requirements - Summary of Prices*).
- (F) This Contract is a Qualifying Defence Contract as referred to in Clause 5 (*Qualifying Defence Contract*).

### TERMS AND CONDITIONS APPLICABLE TO PART 1 and PART 2

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<sup>1</sup> To be considered in the context of the legal personality of the appointed Contractor.

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### 1 Definitions

- 1.1 In this Contract the following words and expressions shall be deemed to have the following meanings:

**“Defence Contract Analysis and Reporting System 2”** or **“DefCARS”** is the central system for the capture, storage and analysis of all SSCR contract-level and supplier level reports, owned and operated by the SSRO;

**“Defence Reform Act”** or **“DRA”** means the Defence Reform Act 2014;

**“Dispute Resolution Procedure”** has the meaning given in Part 1 and/or Part 2 of this Contract, applicable to Part 1 or Part 2 as the context requires;

**“FOI Act”** means the Freedom of Information Act 2000;

**“Parent Company”** means [ ] a company registered in [England] (company registration number [ ], whose registered office is at [ ];

**“Parent Company Guarantee”** is the guarantee referred to in Clause 3 (*Parent Company Guarantee*);

**“Qualifying Defence Contract”** or **“QDC”** means a single source contract which has been assessed and which meets the criteria for a contract to which the DRA and SSCR must apply;

**“Single Source Contract Regulations 2014”** or **“SSCR”** means the Single Source Contract Regulations 2014, as amended by the Single Source Contract (Amendment) Regulations 2018, the Single Source Contract (Amendment) (No. 2) Regulations 2018 and the Single Source Contract (Amendment) Regulations 2019;

**“SSRO”** is the UK government's Single Source Regulations Office;

**“Sub-Contracts”** means any sub-contract entered into by the Contractor with a sub-contractor under Part 1 and/or Part 2.

### 2 Conditionality

- 2.1 The obligations and liabilities of the Parties set out in Part 2 of the Contract shall be conditional on:

2.1.1 the decision of the Authority acting in its absolute discretion not to proceed with Part 2 of the Contract; and/or

2.1.2 the achievement of Completion pursuant to Part 1 of this Contract (the **“Condition”**) by no later than 30 November 2025 (the **“Condition Date”**). In relation to this:

- (i) The Authority reserves the right to waive (to such extent as it may think fit in its absolute discretion) the Condition or any part of it (or to extend the Condition Date).

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- (ii) Any waiver by the Authority under Clause 2.1.2(i) is without prejudice to any other rights which the Authority may have under this Contract.
- (iii) If the Condition (to the extent that it, or the relevant part of it, has not been waived by the Authority pursuant to Clause 2.1.2(i)) is not fulfilled on or before midnight on the Condition Date, then (save for any terms of this Contract which survive termination of this Contract, in respect of which the Authority shall be free to make claims against the Contractor in relation to any damage, losses, liabilities, claims, actions, costs, expenses (including legal expenses on a standard basis), proceedings, demands and charges whether arising under statute, contract or at common law suffered), the Authority may at its discretion serve a notice on the Contractor to terminate this Contract (a “**Termination Notice**”) stating:
  - (A) that the Authority is terminating this Contract for failure by the Contractor to achieve the Condition on the Condition Date (as such date may have been extended by the Authority pursuant to Clause 2.1.2(i)); and
  - (B) that this Contract shall terminate on the day falling five (5) Business Days after the date the Contractor receives the Termination Notice,

and, except in respect of any continuing obligations of the Contractor as set out in Part 1 of the Contract, all of the other agreements and obligations of the Parties under this Contract shall terminate.

### **3 Parent Company Guarantee**

- 3.1 The Contractor has agreed to procure the provision of the Parent Company Guarantee<sup>2</sup> in support of the Contractor’s obligations to the Authority in respect of both Part 1 and Part 2 in the form of the Parent Company Guarantee annexed at Appendix 2 (*Parent Company Guarantee*). The Parties acknowledge that on the date of this Contract the Contractor has delivered to the Authority an original, duly executed Parent Company Guarantee together with a certified copy of the board minutes under which the Parent Company Guarantee is executed [and a legal opinion (confirming that the Parent Company Guarantee is validly executed and enforceable)<sup>3</sup>].

### **4 Security Conditions**

- 4.1 The Parties agree that the Security Conditions set out in Appendix 3 (“**Security Conditions**”) shall apply to Part 1 and Part 2.

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<sup>2</sup> The requirement for any contract performance/financial security is to be considered on a contract by contract basis. Wording in brackets to be adopted as the commercial approach to a guarantee is determined. [A parent company guarantee [may/will] be required from the successful Tenderer or each member of any consortium that is formed to deliver this Contract. Where a parent company guarantee is not appropriate (as a result of the legal constitution of the successful Bidder/any participating member of the consortium), then equivalent security [may/will] be required to be provided in support of the Contractor’s obligations under this Contract in the form of a performance bond or other security. This Contract will be amended accordingly to reflect any proposed security package for the successful Bidder.]

<sup>3</sup> A legal opinion will be required if the Contractor and/or its parent are not registered in the UK.

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### 5 **Qualifying Defence Contract**

- 5.1 This Contract is a Qualifying Defence Contract for the purposes of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014.

### 6 **QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts**

- 6.1 In this Clause 6 (*QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts*), the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

6.1.1 "**Group Undertaking**" has the meaning given by section 1161 of the Companies Act 2006.

6.1.2 "**Material Single Source Sub-Contract (Non-Qualifying)**" means a Sub-Contract entered into by the Contractor where:

- (i) the Sub-Contract is entered into at the same time as, or after, this Contract was entered into; and
- (ii) the Sub-Contract is entered into for the purposes of this Contract;
- (iii) the award of the Sub-Contract is not the result of a "competitive process" as defined in Regulation 59 of the SSCR for Qualifying Sub-contracts ("**QSC**");
- (iv) the value of the Sub-Contract is of, or above one million pounds (£1,000,000);
- (v) at least fifty per cent (50%) of the Sub-Contract (by value) is required either to enable performance of this Contract or to enable the combined performance of this Contract and any other Qualifying Defence Contract, or prospective contract, under the SSCR, to which the Contractor or any Group Undertaking of the Contractor is a party, or might become a party; and
- (vi) the Sub-Contract is not a QSC as defined in the SSCR.

- 6.2 Except where the Authority expressly agrees otherwise in writing, the Contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) the terms specified in the Appendix to DEFCON 802 (*QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts*) (Edition 12/14) (inserting relevant party names and/or definitions where appropriate).

- 6.3 Before entering into a Material Single Source Sub-contract (Non-Qualifying), the Contractor shall promptly notify the Authority where it is unable to include the terms specified in the Appendix to DEFCON 802 (*QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts*) (Edition 12/14) or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-contract.

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### **7 QDC: Confidentiality of Single Source Contract Regulations Information**

- 7.1 In this Clause 7 (*QDC: Confidentiality of Single Source Contract Regulations Information*), the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

**“Single Source Contract Regulations Information” (“SSCR Information”)** and **“Open Book and Reporting Information” (“OBR Information”)** (and, for the purposes of this Clause 7, SSCR Information and OBR Information shall be referred to collectively as OBR Information), means any confidential information in any written or other tangible form, which relates to the contract disclosed by the Contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56 (1) (but not including information described in Regulation 56 (3)(h) to (n)) of the SSCR relating to this Contract. It shall not include information that:

- 7.1.1 is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisers or consultants of the Authority, in breach of the provisions of this Contract, the DRA, the SSCR or of any other obligation of confidence owed to the Party to whom the information relates;
  - 7.1.2 was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority;
  - 7.1.3 was lawfully in the possession of the Authority before the information was disclosed to it by the Contractor; or
  - 7.1.4 the Parties agree in writing is not confidential or may be disclosed.
- 7.2 The Authority shall keep OBR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the OBR Information in whole or in part to any person, except as expressly permitted by this Clause 7 (*QDC: Confidentiality of Single Source Contract Regulations Information*).
- 7.3 The Authority may disclose the OBR Information in all circumstances which would be permitted disclosures under section 5 (1) of Schedule 5 of the DRA.
- 7.4 Where the Authority discloses OBR Information to any Central Government Body under Clause 7.3 (*QDC: Confidentiality of Single Source Contract Regulations Information*), the Authority shall ensure that the recipient of the OBR Information is made aware of and asked to respect its confidentiality.
- 7.5 Where the Authority discloses OBR Information to its professional advisers or consultants under Clause 7.3 (*QDC: Confidentiality of Single Source Contract Regulations Information*), the Authority shall inform them of the confidential nature of the OBR Information before disclosure and shall obtain from them enforceable obligations to keep the OBR Information confidential in terms at least as extensive and binding on them as the terms of this Clause 7 (*QDC: Confidentiality of Single Source Contract Regulations Information*) are on the Authority.
- 7.6 To the extent permitted by the time for compliance under the FOI Act, the Authority shall consult the Contractor where the Authority is considering the disclosure of OBR

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Information under the FOI Act, and, in any event, shall provide prior notification to the Contractor of any decision to disclose the OBR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose OBR Information in order to comply with the FOI Act is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act. For the avoidance of doubt, nothing in this Clause 7 (*QDC: Confidentiality of Single Source Contract Regulations Information*) shall affect the Contractor's rights at law.

- 7.7 If, for the purposes of this Contract, the Contractor enters into a Sub-Contract which it has assessed to be a Qualifying Sub-contract for the purpose of the DRA and SSCR, it shall include in that Sub-Contract the terms set out in the Appendix to DEFCONs 812 (*Single Source Open Book*) (Edition 04/15), 813 (*Single Source Contract Reports and Notifications*) (Edition 12/14) and 814 (*Single Source Confidentiality of Open Book and Reporting Information*) (Edition 02/19) (inserting relevant party names and/or definitions where appropriate).
- 7.8 The obligations set out in this Clause 7 (*QDC: Confidentiality of Single Source Contract Regulations Information*) shall be the Authority's sole contractual obligations of confidentiality regarding the OBR Information. Any other provision of this Contract relating to the confidentiality of information provided under or in connection with this Contract, including but not limited to any disclosure of information pursuant to this Contract, shall be construed in such a way as to exclude the OBR Information from their application.
- 7.9 Nothing in this Clause 7 (*QDC: Confidentiality of Single Source Contract Regulations Information*) shall affect the Authority's obligations of confidentiality where information is disclosed orally in confidence.
- 7.10 The Contractor shall notify the Authority if, at any time, it considers (acting reasonably) that any of the information contained within any Contractor Deliverable constitutes OBR Information and shall identify which part (or parts) constitutes such information.

## **8 Amendments to Qualifying Defence Contracts – Consolidated Versions**

- 8.1 For the purposes of this Clause 8 (*Amendments to Qualifying Defence Contracts Consolidated Versions*):
- 8.1.1 "consolidated version" means a version of this Contract which incorporates into the body of this Contract all amendments made to this Contract; and
- 8.1.2 "consolidated version date" means:
- (i) where one or more consolidated versions have been issued, the date on which the latest consolidated version was issued, or
  - (ii) where a consolidated version has not been issued, the date on which this Contract was entered into.
- 8.2 Where the Contract is amended in accordance with this Contract, the Authority shall issue to the Contractor, within twenty-five (25) Business Days of agreeing the relevant amendment, a consolidated version, unless the Contractor is obliged under any other provision of this Contract to prepare an up-dated or consolidated version following any variation.



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- 8.3 The consolidated version issued in accordance with Clause 8.2 (*Amendments to Qualifying Defence Contracts – Consolidated Versions*) shall incorporate only amendments previously agreed between the Parties in accordance with this Contract and shall be signed on behalf of the Authority.
- 8.4 The Contractor shall within ten (10) Business Days of receiving the consolidated version:
- 8.4.1 sign and return to the Authority a copy of the consolidated version, to confirm that it properly incorporates all amendments made to this Contract; or
  - 8.4.2 notify the Authority in writing why it believes that the consolidated version does not properly incorporate all amendments made to this Contract and if the Contractor does not so notify the Authority the Contractor will be deemed to have accepted the Contract with the consolidated amendments as the then current and agreed version of the Contract.
- 8.5 Following any notification made by the Contractor under Clause 8.4 (*Amendments to Qualifying Defence Contracts – Consolidated Versions*), the Authority and the Contractor shall seek to reach agreement on the content of the consolidated version, in the absence of which the matter may be resolved through the Dispute Resolution Procedure.
- 8.6 Within ten (10) Business Days of the Parties reaching agreement or the matter being determined through the Dispute Resolution Procedure, the Authority shall reissue a signed consolidated version which accords with that agreement or determination and which the Contractor shall sign and return to the Authority within ten (10) Business Days of receiving it.

## 9 **QDC Reporting**

- 9.1 The Contractor shall comply with the reporting obligations set out in the DRA and SSCR and shall utilise the DefCARS when submitting reports mandated by the DRA and associated regulations and the SSCR.
- 9.2 Without prejudice to Clause 9.1 above and/or the Contractor's reporting obligations set out in Z Clause 27E of NEC Option C of Part 1 and/or Schedule 8 of Part 2, the Contractor shall with one (1) month of the award of this Contract submit to the SSRO and the Authority via DefCARS:
- 9.2.1 a Contract Pricing Statement (**CPS**);
  - 9.2.2 a Contract Reporting Plan (**CRP**); and
  - 9.2.3 a Contract Notification Report (**CNR**),
- and the reports set out in Clauses 9.2.1 to 9.2.3 (inclusive) shall be labelled the "**Contract Initiation Report**" (but each such report may be viewed separately).
- 9.3 [Pursuant to and in accordance with the SSCR and/or the DRA in relation to the provision of contract reports relating to a QDC, the Contractor shall submit to the SSRO

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and the Authority via DefCARS Quarterly Contract Reports (**QCR**) for the duration of this Contract.]<sup>4</sup>

- 9.4 [Pursuant to and in accordance with the SSCR and/or the DRA in relation to the provision of contract reports relating to a QDC, the Contractor shall submit to the SSRO and the Authority via DefCARS Interim Contract Reports (**ICR**) for the duration of this Contract, the first such ICR to be submitted on the award of this Contract and thereafter the Contractor shall submit an ICR at the end of each subsequent twelve (12) month period.]<sup>5</sup>
- 9.5 The Contractor shall submit the following mandatory SSCR end of contract reports to the SSRO and the Authority via DefCARS:
- 9.5.1 Contract Completion Report (**CCR**) within six (6) months of the expiry or sooner determination of this Contract; and
- 9.5.2 Contract Costs Statement (**CCS**) within twelve (12) months of the expiry or sooner determination of this Contract.
- 9.6 The Contractor shall ensure that the format of all price breakdown and costs reports referred to in this Clause 9 (*QDC Reporting*) shall be in line with the format of the costs model submitted by the Contractor with its final tender submission.

## **10 Final Price Adjustment**

- 10.1 The Contractor acknowledges that the final price adjustment (as defined in Regulation 16(1) of the SSCR) in respect of its costs relating to Part 1 Stage 1 (*Early Contractor Involvement*) and its costs relating to Part 2 shall take place at the end or sooner determination of Part 2 (unless the Authority has in its absolute discretion decided not to proceed with Part 2 of the Contract pursuant to Clause 2.1.1 and, in such circumstances, the final price adjustment in respect of the Contractor's costs relating to Part 1 Stage 1 (*Early Contractor Involvement*) shall take place within the timeframes prescribed by the SSCR.

## **11 Matters to be included in Sub-Contracts**

- 11.1 The Contractor shall ensure that all Sub-Contracts which it enters into after the award of this Contract shall include the provisions of:
- 11.2 Clause 6 (*QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts*);
- 11.3 Clause 7 (*QDC: Confidentiality of Single Source Contract Regulations Information*); and
- 11.4 Clause 9 (*QDC Reporting*).

## **12 DEFFORMS applicable to Part 1 and Part 2 of these Terms and Conditions**

- 12.1 The DEFFORMS applicable to provisions contained or referred to in Part 1 and Part 2 of these Terms and Conditions are as listed in Appendix 4 and the Contractor shall

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<sup>4</sup> Note – relevant if the overall value of the Contract is £50,000,000 or higher.

<sup>5</sup> Note - relevant if the overall value of the Contract is under £50,000,000.

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complete the relevant DEFFORM as required by the relevant provisions of Part 1 and Part 2 of these Terms and Conditions.

### **13     Execution**

- 13.1 It is agreed that the normal six (6) year period that would apply for commencing an action for breach of contract pursuant to section 5 of the Limitation Act 1980 should not apply to Part 1 and Part 2 Terms and Conditions of the Contract and that it should be replaced with a period of twelve (12) years, but that otherwise the provisions of the Limitation Act 1980 are to apply to Part 1 and Part 2 Terms and Conditions and any actions brought under or arising out of or connected to Part 1 and/or Part 2 of these Terms and Conditions.

### **14     Counterparts**

- 14.1 This Contract may be entered into in any number of counterparts and each of the signed counterparts, when duly signed, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.

This Contract is signed by the Parties on the day and year first above written.

Signed by or on behalf of:

**THE SECRETARY OF STATE FOR DEFENCE**

.....

Signed by or on behalf of:

**THE CONTRACTOR**

.....

## **APPENDIX 1**

## Summary of Prices

THE SECRETARY OF STATE FOR DEFENCE		
<b>Name and Address of Contractor:</b>  [                      ]  [                      ]  [                      ]	<b>Royal Air Force Centre of Aviation Medicine Relocation</b>	<b>Contract No</b>  701577386
<b>Issued with</b>  Covering Letter	<b>On [          ]</b>	<b>Previous Contract No</b>  N/A

## Summary of Prices

Item No	Description	Total Price  £ Sterling  (ex VAT)
1	Stage 1  Early Contractor Involvement	Firm Price  £[ ]
2	Stage 2  The detailed design and build of RAF CAM equipment and infrastructure	£[ ]
3	Equipment Maintenance and Support in accordance with the Scope Part 2 and Schedule 9 ( <i>Pricing and Payment</i> ) of Part 2 of the Contract.	Firm Price Years 1 to 3  £[ ]
		Fixed Price Years 4 and 5

Terms & Conditions applicable to Part 1 OFFICIAL and Part 2 of the Contract - Royal Air Force Centre of Aviation Medicine Relocation - Contract No. 701577386 – Revised ITN version – August 2022

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		£[ ] (Variation of Price Formula for Fixed Price Years 4 and 5 to be based on economic conditions of Year 1)
4	Tasking	Firm Price Rates Years 1-3
		Fixed Price Rates Years 4 and 5
5	Option 1 ( <i>First One (1) Year Extension of Equipment Maintenance and Support</i> ) in accordance with the Scope and Schedule 9 Part 2 ( <i>Pricing and Payment</i> )	Fixed Price Year 6 £[ ] (Variation of Price Formula for Option 1 to be based on economic conditions of Year 1)
6	Option 2 ( <i>Second One (1) Year Extension of Equipment Maintenance and Support</i> ) in accordance with the Scope and Schedule 9 Part 2 ( <i>Pricing and Payment</i> )	Fixed Price Year 7 £[ ] (Variation of Price Formula for Option 2 to be based on economic conditions of Year 1)

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**APPENDIX 2**  
**PARENT COMPANY GUARANTEE**

**DATED** \_\_\_\_\_ **20[ ]**

[Insert the name of the Guarantor] (1)

**AND**

**THE SECRETARY OF STATE FOR  
DEFENCE** (2)

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**PARENT COMPANY GUARANTEE**

**relating to [Insert details of the  
relevant contract]**

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15. Process Agent
16. Counterparts

THIS **GUARANTEE** is made of 20[ ] the day

**BETWEEN:**

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

**WHEREAS:**

- (A) It is a condition of the Guaranteed Agreement (defined below) that [Insert details of the Contractor] ("**Contractor**") procure the execution and delivery by the Guarantor of this Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Contractor, to guarantee the due performance by the Contractor of all of the Contractor's obligations under the Guaranteed Agreement.
- (C) In consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

**1 Definitions and Interpretation**

**1.1 In this Guarantee:**

- 1.1.1 unless defined elsewhere in this Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.1.2 the words and phrases below shall have the following meanings:
  - 1.1.2.1 "**Affiliate**" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company", "parent undertaking" and "subsidiary" shall have the meaning given to them in section 1159 and section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee), by way of security or in connection with the taking of security, or (ii) its nominee;
  - 1.1.2.2 "**Guaranteed Agreement**" means [Insert details of the Guaranteed Agreement]; and
  - 1.1.2.3 "**Guaranteed Obligations**" means all obligations, representations, warranties, duties and undertakings of the Contractor under, ancillary to



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or calculated by reference to the  
Guaranteed Agreement (as varied from time to time) and “**Guaranteed  
Obligation**” means any one of them.

- 1.1.3 references to this Guarantee and any provisions of this Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- 1.1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.1.10 references to Clauses are, unless otherwise provided, references to Clauses of this Guarantee; and
- 1.1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2 Guarantee and Indemnity**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Contractor to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon receipt of a demand from the Beneficiary in accordance with Clause 4.2 below, to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Contractor to the Beneficiary pursuant to the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon receipt of a demand from the Beneficiary in accordance with Clause 4.2 below, it shall, at the cost and expense of the Guarantor:

- 2.3.1 fully, punctually and specifically perform (either itself or, with the consent of the Beneficiary which shall not be unreasonably withheld or delayed, and provided that the Guarantor will nonetheless remain fully responsible for the performance of the Guaranteed Obligations, by an Affiliate or other third party) such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and be liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including all court costs and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Contractor under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including all legal costs and expenses on a solicitor and own client basis, together with any disbursements), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any Guaranteed Obligation is or becomes unenforceable, invalid or illegal as if such Guaranteed Obligation had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the Guaranteed Obligation had not become unenforceable, invalid or illegal.
- 2.5 [The parties named as the Guarantor shall be jointly and severally liable for the obligations and liabilities of the Guarantor herein contained or arising out of this Guarantee and all references herein to the Guarantor shall be construed as references to any one or more or all of them and the Beneficiary may take action against ,or release or compromise the liability of any one or more of them ,or grant time or other indulgence to any one or more of them without affecting the liability of any of the others.] [**\*\*\*Delete if there is a single Guarantor\*\*\***]

### **3 Obligation to enter into a new contract**

- 3.1 If a Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Contractor, or if a Guaranteed Agreement is disclaimed by a liquidator of the Contractor or the obligations of the Contractor are declared to be void or voidable for any reason, then the Guarantor shall, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as that Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

### **4 Demands and Notices**

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Guarantee shall be in writing, addressed to:

[Address of the Guarantor in England and Wales]

[For the Attention of]

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any demand purported to be served on the Guarantor under this Guarantee shall only be valid in so far as it:
- 4.2.1 states the amount or amounts claimed (identifying new amounts claimed and the total of amounts claimed when aggregated with all previous amounts claimed under this Guarantee);
  - 4.2.2 is signed by an authorised signatory of the Beneficiary.
- 4.3 Any notice or demand served on the Guarantor or the Beneficiary under this Guarantee shall be deemed to have been served if:
- 4.3.1 delivered personally, at the time of delivery; or
  - 4.3.2 posted by pre-paid first class post, recorded delivery or registered post, three (3) Business Days from the date of posting.
- 4.4 In proving service, it shall be sufficient to prove that the envelope containing the notice or demand was addressed to the relevant party at its address previously notified for the receipt of notices or demands (or as otherwise notified by that party in writing) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery or registered post.
- 4.5 Any notice or demand purported to be served on the Beneficiary under this Guarantee shall only be valid when received in writing by the Beneficiary.

## **5 Beneficiary's Protections**

- 5.1 The Guarantor's liability under this Guarantee shall not be discharged or released from this Guarantee in whole or in part or otherwise diminished or affected by any act or omission of the Beneficiary or any other event or circumstance which might otherwise discharge or release the Guarantor to any extent or affect (or provide any defence in respect of) its obligations under this Guarantee, including (without prejudice to the generality of the foregoing) by any:
- 5.1.1 arrangement made between the Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor); or
  - 5.1.2 amendment to, or extension, waiver (in whole or in part) or termination of the Guaranteed Agreement (in each case whether with or without the assent of the Guarantor); or
  - 5.1.3 amendment, termination, forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor); or

5.1.4 arrangement or agreement made between the Beneficiary and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor.

- 5.2 This Guarantee shall be a continuing security for the Guaranteed Obligations.
- 5.3 This Guarantee shall not be discharged by any partial performance (except to the extent of such partial performance) by the Contractor (or any other entity acting on its behalf) of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Guarantee.
- 5.4 This Guarantee shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Contractor, the Beneficiary, the Guarantor or any other person.
- 5.5 If, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof.
- 5.6 The rights of the Beneficiary against the Guarantor under this Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.7 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same or any other Guaranteed Obligation.
- 5.8 The Beneficiary shall not be obliged before taking steps to enforce this Guarantee against the Guarantor to obtain judgment against the Contractor, the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor, the Guarantor or any third party, or to take any action whatsoever against the Contractor, or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.9 The Beneficiary's rights under this Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.10 Any waiver by the Beneficiary of any terms of this Guarantee or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.11 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Guarantee

subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made to the extent so voided, set aside or refunded.

- 5.12 The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6 Rights of Subrogation**

- 6.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Guarantee, exercise any rights it may have:

6.1.1 of subrogation and indemnity;

6.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations; and

6.1.3 to prove in the liquidation or insolvency of the Contractor,

only if the Beneficiary so consents or requires and only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand.

- 6.2 The Guarantor hereby acknowledges that it has not taken any security from the Contractor and agrees not to do so until the Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause 6.2 on trust for the Beneficiary.

## **7 Representations and Warranties**

- 7.1 The Guarantor hereby represents and warrants to the Beneficiary that:

7.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

7.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Guarantee;

7.1.3 the execution and delivery by the Guarantor of this Guarantee and the performance by the Guarantor of its obligations under this Guarantee, including entry into and performance of a contract pursuant to Clause 3, have been duly authorised by all necessary corporate action and do not contravene or conflict with:

7.1.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

7.1.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

7.1.3.3

the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;

7.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Guarantee, and to make this Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

7.1.5 this Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **8 Payments and Set-Off**

8.1 All sums payable by the Guarantor under this Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law. If any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

8.2 The Guarantor shall pay interest on any amount due under this Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to 4% above the base rate of the Bank of England from time to time in force.

8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Guarantee.

## **9 Guarantor's Acknowledgement**

9.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Guarantee.

## **10 Assignment**

10.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

## **11 Severance**

11.1 If any provision of this Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Guarantee had been signed with the invalid, illegal or unenforceable provision eliminated.

**12 Third Party Rights**

- 12.1 A person who is not a party to this Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**13 Addendum or Variation**

- 13.1 The Guarantor by this Guarantee authorises the Contractor and the Beneficiary to make any addendum or variation to the Guaranteed Agreement, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee.

**14 Governing Law**

- 14.1 This Guarantee, and any non-contractual claims or disputes arising herefrom, shall be governed by and construed in all respects in accordance with English law.
- 14.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any claim or dispute which may arise out of or in connection with this Guarantee (including any non-contractual claims or disputes) and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 14.3 Nothing contained in this Clause 14 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 14.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause 14 on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 14.5 The Guarantor irrevocably agrees for the benefit of the Beneficiary that it shall be bound by all court judgements or arbitration awards relating to the Guaranteed Agreement and/or the Guaranteed Obligations.

**15 Process Agent**

- 15.1 [The Guarantor hereby irrevocably designates, appoints and empowers [the Contractor] [a suitable alternative to be agreed if the Contractor's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]]  
**[\*\*\*Delete if Guarantor is incorporated in England or Wales\*\*\*]**

**16 Counterparts**

- 16.1 This Guarantee may be entered into in any number of counterparts and each of the executed counterparts, when duly executed and delivered, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE

This instrument has been signed and is delivered and takes effect on the date stated at the beginning of it.

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE



**Guarantor**

Signed by [ ] acting by two)  
directors or a director and a secretary: )  
)

.....

Director

.....

Director/Secretary

**Beneficiary**

Signed by **THE SECRETARY** )  
**OF STATE FOR DEFENCE** in the presence) )  
of: )

.....

Authorised signatory

### **APPENDIX 3**

#### **SECURITY CONDITIONS**

##### **UK OFFICIAL AND UK OFFICIAL-SENSITIVE CONTRACTUAL SECURITY CONDITIONS**

###### **Purpose**

- 1 This document provides guidance for Contractors where classified material provided to or generated by the Contractor is graded UK OFFICIAL or UK OFFICIAL-SENSITIVE. Where the measures requested below cannot be achieved or are not fully understood, further advice should be sought from the UK Designated Security Authority (Email: SPODSR-IIPCSy@mod.gov.uk).

###### **Definitions**

- 2 The term "*Authority*" for the purposes of this Annex means the HMG Contracting Authority.
- 3 The term "*Classified Material*" for the purposes of this Annex means classified information and assets.

###### **Security\_Grading**

- 4 The SENSITIVE caveat is used to denote UK OFFICIAL material that is of a particular sensitivity and where there is a need to reinforce the 'need to know'. The Security Aspects Letter, the form of which is at Annex A to this Appendix 3, issued by the Authority shall define the UK OFFICIAL-SENSITIVE material that is provided to the Contractor, or which is to be developed by it, under this Contract. The Contractor shall mark all UK OFFICIAL and UK OFFICIAL-SENSITIVE documents which it originates or copies during the Contract with the applicable security grading.

###### **Security\_Conditions**

- 5 The Contractor shall take all reasonable steps to adhere to the provisions specified in the Contract or listed in this Annex. The Contractor shall make sure that all individuals employed on any work in connection with the Contract have notice that these provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract. The Authority must state the data retention periods to allow the Contractor to produce a data management policy. If you are a Contractor located in the UK your attention is also drawn to the provisions of the Official Secrets Acts 1911 to 1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular.

###### **Protection of UK OFFICIAL and UK OFFICIAL-SENSITIVE Classified Material**

- 6 The Contractor shall protect UK OFFICIAL and UK OFFICIAL-SENSITIVE material 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 shall take all reasonable steps to prevent the loss or compromise of classified material whether accidentally or from deliberate or opportunist attack.

- 7 Once the Contract has been awarded, where Contractors are required to store or process UK MOD classified information electronically, they are required to register the IT system onto the Defence Assurance Risk Tool (DART). Details on the registration process can be found in the 'Industry Security Notices (ISN)' on Gov.UK website. ISNs 2017/01, 04 and 06, Defence Condition 658 and Defence Standard 05-138 details the DART registration, IT security accreditation processes, risk assessment/management and Cyber security requirements which can be found in the following links:

<https://www.gov.uk/government/publications/industry-security-notices-isns>.  
<http://dstan.gateway.isg-r.r.mil.uk/standards/defstans/05/138/000002000.pdf>  
<https://www.gov.uk/government/publications/defence-condition-658-cyber-flow-down>

- 8 All UK classified material including documents, media and other assets must be physically secured to prevent unauthorised access. When not in use UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be subject to a level of control.
- 9 Disclosure of UK OFFICIAL and UK OFFICIAL-SENSITIVE material must be strictly controlled in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than to a person directly employed by the Contractor or sub-Contractor.
- 10 Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority otherwise than for the purpose of the Contract, and, same as provided for in paragraph 8 above, the Contractor shall not make use of any article or part thereof similar to the articles for any other purpose.
- 11 Subject to any intellectual property rights of third parties, nothing in this Security Condition shall restrict the Contractor from using any specifications, plans, drawings and other documents generated outside of this Contract.
- 12 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 34.

### Access

- 13 Access to UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall 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.
- 14 The Contractor shall 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 and regulations. This is in keeping with the core

principles set out in the UK Government (HMG) Baseline Personnel Security Standard (BPSS) which can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714002/HMG\\_Baseline\\_Personnel\\_Security\\_Standard\\_-\\_May\\_2018.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf)

### **Hard Copy Distribution**

- 15 UK OFFICIAL and UK OFFICIAL-SENSITIVE documents may be distributed, both within and outside Contractor premises 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 must bear a stamp or marking that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.
- 16 Advice on the distribution of UK OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of UK OFFICIAL-SENSITIVE shall be sought from the Authority.

### **Electronic Communication and Telephony and Facsimile Services**

- 17 UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a National Cyber Security Centre (NCSC) Commercial Product Assurance (CPA) cryptographic product or a UK 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>

- 18 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 shall 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 require. Such limitations including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.
- 19 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.
- 20 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 transmitted only where there is a strong business case to do so and only with the prior approval of the Authority.

## Use of Information Systems

- 21 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.
- 22 The Contractor should ensure **10 Steps to Cyber Security** (Link below) is applied in a proportionate manner for each IT and communications system storing, processing or generating UK OFFICIAL or UK OFFICIAL-SENSITIVE information. The Contractor should ensure competent personnel apply 10 Steps to Cyber Security.

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

- 23 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.
- 24 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, e.g. 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 16 above.

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

(1) The following events shall 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.

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

- 25 Laptops holding any UK OFFICIAL-SENSITIVE information shall be encrypted using a CPA product or equivalent as described in paragraph 17 above.
- 26 Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites<sup>6</sup>. For the avoidance of doubt the term “drives” includes all removable, recordable media e.g. memory sticks, compact flash, recordable optical media (CDs and DVDs), floppy discs and external hard drives.
- 27 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.
- 28 Portable CIS devices holding the Authorities’ 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

- 29 The Contractor shall immediately report any loss or otherwise compromise of any OFFICIAL or OFFICIAL-SENSITIVE material to the Authority. In addition any loss or otherwise compromise of any UK MOD owned, processed or UK MOD Contractor generated UK OFFICIAL or UK OFFICIAL-SENSITIVE material 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) below. 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 Contractor concerned. The UK MOD WARP will also advise the Contractor what further action is required to be undertaken.

### **JSyCC WARP Contact Details**

**Email:** [DefenceWARP@mod.gov.uk](mailto:DefenceWARP@mod.gov.uk) (OFFICIAL with no NTK restrictions)

**RLI Email:** [defencewarp@modnet.rli.uk](mailto:defencewarp@modnet.rli.uk) (MULTIUSER)

**Telephone (Office hours):** +44 (0) 30 6770 2185

**JSyCC Out of hours Duty Officer:** +44 (0) 7768 558863

**Mail:** JSyCC Defence Industry WARP

X007 Bazalgette Pavilion,

RAF Wyton, HUNTINGDON, Cambridgeshire, PE28 2EA.

- 30 Reporting instructions for any security incidents involving MOD classified material can be found in Industry Security Notice 2017/03 as may be subsequently updated at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/651683/ISN\\_2017-03\\_-\\_Reporting\\_of\\_Security\\_Incidents.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651683/ISN_2017-03_-_Reporting_of_Security_Incidents.pdf)

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<sup>6</sup> Secure Sites are defined as either Government premises or a secured office on the contractor premises.

**Sub-Contracts**

- 31 Where the Contractor wishes to sub-contract any elements of a Contract to sub-Contractors within its own country or to Contractors located in the UK such sub-contracts will be notified to the Contracting Authority. The Contractor shall ensure that these Security Conditions are incorporated within the sub-contract document.
- 32 The prior approval of the Authority shall 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 GovS 007 Security Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 can be found at Appendix 5 at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/710891/2018\\_May\\_Contractual\\_process.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/710891/2018_May_Contractual_process.pdf)

- 33 If the sub-contract is approved, the Contractor will flow down the Security Conditions in line with paragraph 31 above to the sub-Contractor. Contractors located overseas may seek further advice and/or assistance from the Authority with regards the completion of F1686.

**Publicity Material**

- 34 Contractors wishing to release any publicity material or display assets 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 Government

**Physical Destruction**

- 35 As soon as no longer required, UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. Advice shall 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 shall be returned to the Authority.

**Interpretation/Guidance**

- 36 Advice regarding the interpretation of the above requirements should be sought from the Authority.
- 37 Further requirements, advice and guidance for the protection of UK classified 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**

- 38 Where considered necessary by the Authority the Contractor shall provide evidence of compliance with this Security Condition and/or permit the inspection of the Contractors processes and facilities by representatives of the Contractors' National/Designated Security Authorities or the Authority to ensure compliance with these requirements.

Annex ASecurity Aspects Letter (SAL)**Date of Issue:** DD/MM/YYYY

INSERT  
FULL ADDRESS OF

**For the attention of:**

(Name of company's approved recipient  
including full address)

**ITT/CONTRACT NUMBER & TITLE:** (to be inserted by the Commercial staff)

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 ITT 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 [attach a copy of Annex C] outlines the minimum measures required to safeguard OFFICIAL-SENSITIVE assets and information.

ASPECTS	CLASSIFICATION

(Note: Add more rows as required)

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 ITT have notice of the above specified aspects and that the aforementioned statutory provisions apply to them and will

continue to apply should the ITT be unsuccessful.

4. Will you please confirm that:
  - a. This definition of the classified aspects of the referenced Invitation to Tender 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 ITT.
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 ITT 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

Copy via email to:

[ISAC-Group \(MULTIUSER\)](#)

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

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

**APPENDIX 4**

**DEFFORMS APPLICABLE TO PART 1 AND PART 2 OF THESE TERMS AND CONDITIONS**

DEFFORM 68 relevant to provisions relating to any Supply of Hazard Data.

DEFFORM 82A relevant to provisions relating to any List of Spares – New Equipment.

DEFFORM 82B relevant to provisions relating to any List of Spares – Modifications.

DEFFORM 94 relevant to provisions relating to any Confidentiality Agreement in relation to Intellectual Property.

DEFFORM 111 relevant to provisions relating to Packaging (for Articles other than Munitions), any Requirement for a Certificate of Conformity and the provision of Notices.

DEFFORM 129A relevant to provisions relating to Packaging (for Articles other than Munitions).

DEFFORM 129B (Packaging Designs Concerns) relevant to provisions relating to Packaging (for Articles other than Munitions).

DEFFORM 129J relevant to provisions relating to use of the Electronic Business Delivery Form and Packaging (for Articles other than Munitions).

DEFFORM 139 relevant to provisions relating to SME Spend Data Collection.

DEFFORM 315 relevant to provisions relating to Design Rights and Rights to Use Design Information, Repair and Maintenance Information and Retention of Records

DEFFORM 528 relevant to provisions relating to Import and Export Licences.

DEFFORM 532 relevant to provisions relating to Protection of Personal Data.

DEFFORM 539A relevant to provisions relating to the Contractor's Commercially Sensitive Information.

DEFFORM 539B relevant to provisions relating to Publishable Performance Information.

DEFFORM 691A relevant to provisions relating to Timber and Wood-Derived Products.

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE

**PART 1 OF THIS CONTRACT**

**TERMS & CONDITIONS PART 1**

**[Please refer to the documents entitled [ ] reference [ ] attached]**

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE

**PART 2 OF THIS CONTRACT**

**TERMS & CONDITIONS PART 2**

**[Please refer to the documents entitled [ ] reference [ ] attached]**

OFFICIAL-SENSITIVE COMMERCIAL  
OFFICIAL-SENSITIVE