**SC2 (Edn 12/21)**



**Space Delivery Team**

**Contract No: 701575421**

**For:**

**Anechoic Chamber Test Facility GNSS Simulator System**

|  |  |
| --- | --- |
| **Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland**  **Team Name and address:**  **MOD Abbey Wood**  **Space Delivery Team**  **Spruce 1c**  **Bristol BS34 8JH**  **E-mail Address:** Thomas.Shields101@mod.gov.uk  **Telephone Number:**  07812 461417  **Facsimile Number:** | **And**  **Contractor Name and address:**  **Spirent Communications PLC**    **Origin One, 108 High Street**  **Crawley,**  **West Sussex**  **RH10 1BD**  **E-mail Address:**  Simon.Lithgow@spirent.com  **Telephone Number:**  01803 546365  **Facsimile Number:** |

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## 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 Contractmay 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, 13.e, 13.h 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. Clauses 13.a and 13.b shall not apply to any Information 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) on a confidential basis 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;

(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) 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) 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. 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.

h. 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.

i. 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: DefComrclSSM-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 clause 13, 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);

(4) and 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 symbologyshall 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](mailto: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. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor’s Records).

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) identification marks, batch and serial numbers in accordance with the Specification;

(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.c. 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 responsible, 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 Contractors 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 30 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 30 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 1977;

(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 Cays 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:**

**DEFCON 076 (SC2)**

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

**DEFCON 524A**

DEFCON 524A (Edn. 02/20) – Counterfeit Materiel

**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 611 (SC2)**

DEFCON 611 (SC2) (Edn. 02/16)- Issued Property

**DEFCON 627**

DEFCON 627 (Edn. 12/10) - Quality Assurance - Requirement for a Certificate of Conformity

**DEFCON 649 (SC2)**

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

**DEFCON 658 (SC2) - Cyber Risk Profile - Very Low**

DEFCON 658 (SC2) (Edn. 11/17)

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 694 (SC2)**

DEFCON 694 (SC2) (Edn. 07/21) – Accounting For Property Of The Authority

**General Conditions**

**Third Party IPR Authorisation**

AUTHORISATIONBY 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.

**Intellectual Property Rights**

**DEFCON 16 (Edn 06/21) - Repair and Maintenance Information**

DEFCON 16 (Edn 06/21) - Repair and Maintenance Information

**DEFCON 21 (Edn 06/21) - Retention of Records**

DEFCON 21 (Edn 06/21) - Retention of Records

**DEFCON 090 (Edn. 06/21) - Copyright**

DEFCON 090 (Edn. 06/21) - Copyright

**DEFCON 531 (Edn. 11/14) - Disclosure of Information**

DEFCON 531 (Edn. 11/14) - Disclosure of Information

**DEFCON 632 (Edn. 06/21) - Third Party Intellectual Property- Rights and Inventions**

DEFCON 632 (Edn. 06/21) - Third Party Intellectual Property- Rights and Inventions

**DEFFORM 315-DC 16**

**Ministry of Defence**

**CONTRACT DATA REQUIREMENT**

|  |  |  |  |
| --- | --- | --- | --- |
| 1. ITT/Contract Number  701575421 | 2. CDR Number  1 | 3. Data Category  Maintenance/Repair/Reconditioning/ Operation | 4. Contract Delivery Date  Delivery of SAT Report |
| 5. Equipment/Equipment Subsystem Description  Contract Articles for the Simulator System. | | 6. General Description of Data Deliverable  **1.**  **Preventative/corrective maintenance** **schedules and procedures**  **2. Diagnostic procedures and maintenance schedules**  **3. Operator instructions**  **4. Systems architecture and detailed design document** | |
| 7. Purpose for which data is required  Competitive tendering for Continuing or Post Design Services tasks which may include but not be limited to:  - Design, Development, Integration and  Upgrade of the Contract Article(s),  -Training for operation or servicing of the  Contract Article(s).  -Safe operation of the articles | | 8. Intellectual Property Rights  a. Applicable DEFCONs  DEFCON 16 Edn 10/04  DEFCON 21 Edn 10/04  DEFCON 90 Edn 06/21 (applicable to item 6.4 only)  b. Special IP Conditions | |
| 9. Update/Further Submission Requirements  Updates to be provided annually or unless another period is specified the contract. | | | |
| 10. Medium of Delivery  Electronic | | 11. Number of Copies  1 | |

**DEFFORM 701**

**HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE PURCHASED BY THE SECRETARY OF STATE FOR DEFENCE**

This Agreement is made this 21st day of October day of in the year 2021.

BETWEEN

The Secretary of State for Defence, a corporation sole, (afterwards referred to as the AUTHORITY) as represented by the Directorate of Intellectual Property Rights, Poplar 2a #2218, MOD Abbey Wood, Bristol BS34 8JH

AND

Spirent Communications Positioning Technology Division, a trading division of Spirent Communications plc (Registered Company Number 470893), with an address at Aspen Way, Paignton, Devon TQ4 7QR, UK (afterwards referred to as the COMPANY);

each being referred to as a “Party” and collectively as the “Parties”.each being referred to as a “Party” and collectively as the “Parties”.

BACKGROUND

I. The AUTHORITY wishes to agree standard terms of licence with the COMPANY which will apply to ”Commercial Software” products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and

II. The COMPANY is prepared to agree standard terms of licence with the AUTHORITY in order to facilitate sales of Commercial Software to the AUTHORITY.

For the purpose of this Agreement “Commercial Software” means software available commercially including that software modified on sale to suit the requirements of a customer.

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THE HEAD AGREEMENT

1. The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the “Annex”), as the standard terms of licence for the procurement of Commercial Software by the AUTHORITY from the COMPANY and from any of their wholly owned subsidiaries for which the COMPANY is entitled to make this Head Agreement. This shall not imply that either Party may not propose other conditions for any particular licence or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.

2. Each software licence which is to be procured subject to the standard terms of licence set out in the Annex, shall be established by a schedule (the “Schedule”) which incorporates those terms by making reference to this Head Agreement and the Annex. Each licence so concluded shall be legally separate from this Head Agreement.

3. Each Schedule will take the format provided in the Attachment to the Annex. Individual Schedules may include special conditions adding to, varying, or setting aside any condition set out in the Annex and in the event of any conflict between the terms of the Annex and the special conditions of a Schedule the latter shall prevail.

4. Either Party shall be entitled to terminate this Head Agreement at any time on written notice to the other Party but the termination shall not vary the conditions of or terminate any extant Licences.

5. This Head Agreement shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the jurisdiction of the Courts of England. Other jurisdictions may apply solely for the purpose of giving effect to this Agreement and for the enforcement of any judgement, order or award given under English jurisdiction.

Signed for and on behalf of the Secretary of State for Defence

...................................................................................................

*[Print name] …………………………………..*

In the capacity of ....................................................................*[Insert capacity of signatory]*

Signed for and on behalf of the COMPANY, Spirent Communications Positioning Technology Division, a trading division of Spirent Communications plc



In the capacity of Chief Executive Officer

**DEFFORM 701 Annex**

**ANNEX TO THE HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE BETWEEN THE SECRETARY OF STATE FOR DEFENCE AND .............................................DATED .....................................**

**AGREED STANDARD CONDITIONS**

**1.** **DEFINITIONS**

1.1. “AUTHORITY” shall mean the Secretary of State for Defence.

1.2 “LICENSOR” shall mean the Company identified in the Head Agreement or the wholly owned subsidiary of the Company identified in the Schedule as being the Party granting the Licence to the AUTHORITY.

1.3 "Licensed Software" means the computer programs listed in Part I of the Schedule together with any user documentation, update programs and anything else furnished to the AUTHORITY by the LICENSOR under the Licence in connection with those listed programs, and any portion and copy of any of them.

1.4 "Use" (or "to Use") in relation to the Licensed Software means copying the software from a store unit or medium into equipment, customising it within its existing functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye-readable form.

1.5 "Designated Equipment" means that equipment in respect of which Use of the Licensed Software is licensed. It shall be the equipment specified in Part II of the Schedule unless changed to alternative equipment in accordance with the provisions of Clauses 2.3 or 2.4.

1.6 "Designated Site" means that site for which the Licensed Software is licensed. It shall be the site specified at Part III of the Schedule unless changed to an alternative site in accordance with the provisions of Clause 2.3.

1.7 "Licence" means the rights granted by the LICENSOR to the AUTHORITY in respect of the Licensed Software and all the conditions associated with it, as set out in the Standard Conditions in combination with a relevant Schedule.

1.8 “Schedule” means a schedule to the Head Agreement (in the format provided in the Attachment to this Annex) established by signature of the AUTHORITY and the LICENSOR, under which the LICENSOR undertakes to supply the Licensed Software for Use by the AUTHORITY under the conditions of the Licence. Each Schedule, in combination with these Standard Conditions, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.

1.9 “Standard Conditions” means the conditions set out in this Annex to the Head Agreement, comprising Clauses 1 to 15.

1.10 “Special Conditions” means those conditions (if any) specified in Part VIII of the Schedule.

**2.** **LICENCE GRANT**

2.1 The AUTHORITY may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the AUTHORITY.

2.2 The AUTHORITY may allow contractors of the AUTHORITY and their sub-contractors to Use the Licensed Software on the Designated Equipment at the Designated Site on AUTHORITY contracts only, provided that the AUTHORITY ensures or procures that those contractors and sub-contractors are bound by the conditions of the Licence and that, unless prevented by security considerations, the AUTHORITY shall notify the LICENSOR of the identity of those contractors or sub-contractors as soon as is reasonably practical. The AUTHORITY shall not charge for that Use.

2.3 The AUTHORITY may specify alternative Designated Equipment or an alternative Designated Site by notification to the LICENSOR, in which case Clause 2.1 shall apply only to the alternative Designated Equipment or Designated Site as notified. However, in the event that the alternative Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated Equipment the LICENSOR may require the AUTHORITY to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licensed Software on the existing and alternative Designated Equipment respectively in the LICENSOR's price list current at the time when the AUTHORITY has specified the alternative Designated Equipment.

2.4 The AUTHORITY may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the LICENSOR.

2.5 Notwithstanding the above, the AUTHORITY may copy the Licensed Software in machine-readable form for back-up purposes for Use of the Licensed Software. The AUTHORITY may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the LICENSOR.

**3.** **DELIVERY AND ACCEPTANCE**

3.1 The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the AUTHORITY.

3.2 The LICENSOR or the AUTHORITY as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the AUTHORITY.

3.3 The AUTHORITY may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the AUTHORITY) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The AUTHORITY shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.

3.4 If the AUTHORITY rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the AUTHORITY shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.

3.5 The AUTHORITY and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Clause 3.3.

**4.** **PAYMENT**

4.1 The LICENSOR will invoice the AUTHORITY for the agreed licence fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the AUTHORITY of the Licensed Software.

4.2 The AUTHORITY shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.

**5.** **CONFIDENTIALITY**

5.1.Subject to Clause 5.2 and except as otherwise agreed in writing, the AUTHORITY and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:

a. the Licensed Software;

b. details of the AUTHORITY’s use and application of the Licensed Software;

c. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

the obligation for b. and c. relates only to information received in writing or other material form; and

if such information is disclosed orally, the obligation shall apply for 30 days unless the discloser confirms such information in writing or other material form within 30 days when the obligation of confidence shall apply thereafter.

5.2 The obligations under Clause 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:

a. was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence; or

b. has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it; or

c. has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties; or

d. was generated by that Party independently of the information which is subject to Clause 5.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Clause 5.1 is not revealed.

5.3. The obligations under Clause 5.1 shall be perpetual.

5.4. The AUTHORITY shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the Licence.

5.5. The AUTHORITY shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

6. **IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT**

6.1 The LICENSOR declares that they are entitled as either owner or licensee to provide the Licensed Software to the AUTHORITY on the terms and conditions of the Licence.

6.2 Subject to the limitations imposed in Clauses 6.3 and 6.4, the LICENSOR shall assume all liability and indemnify the AUTHORITY against all costs or liabilities arising under any valid claim or action brought by a third party against either Party, or against any of its contractors (which expression shall include any sub-contractor) engaged in tasks relevant to the provision of the Licensed Software or to the AUTHORITY’s exercise of the Licence, in respect of any third party intellectual property right, including a patent, registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the AUTHORITY or its contractor, then:

(a)        If the claim or action is brought against the LICENSOR they shall take full responsibility for dealing with settling or defending the claim or action;

(b)        If any claim is made against the AUTHORITY or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in their judgement;

(c) If legal action is taken against the AUTHORITY or its contractor that Party shall be entitled to join the LICENSOR in the action.

6.3         Clause 6.2 shall not apply, and the AUTHORITY shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of :

a. Use of the Licensed Software by the AUTHORITY, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the LICENSOR’s specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the AUTHORITY as distinct from other customers for the equivalent Licensed Software;

b.        Use of modifications to the Licensed Software not provided or not approved in writing by the LICENSOR;

c.        infringement by the LICENSOR of any third party intellectual property right by reason only of use of any material provided by the AUTHORITY for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.

6.4        Clause 6.2 shall not apply in the event that, without the consent of the LICENSOR (which shall not be unreasonably withheld) the AUTHORITY:

a.        has made or makes an admission of any sort to the third party relevant to the claim or action;

b.        the AUTHORITY has entered or enters into negotiations with the third party relevant to the claim or action;

c.        the AUTHORITY has made or makes an offer to the third party for settlement of the claim oraction.

6.5         Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against them or their contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the AUTHORITY may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR’s agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Clause 6.2. If any claim is made against the AUTHORITY under Section 55 of the Patents Act 1977 as a result of the AUTHORITY's use of the Software, and if the AUTHORITY offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the LICENSOR, the LICENSOR shall be relieved of any liability which might otherwise arise under Clause 6.2.

6.6 In the event that any claim or action is made which is subject to Clause 6.2 or if in the LICENSOR's reasonable opinion such claim or action is likely to be made, the LICENSOR shall promptly utilise all reasonable endeavours to:

a.        establish or secure the AUTHORITY's right to continue to Use the Licensed Software or, failing to do so,

b.        avoid that claim or action by, and after consultation with the AUTHORITY as to how to minimise the AUTHORITY's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR's expense, including installation and testing.

6.7 In the event of the LICENSOR being unable to satisfy the requirements of sub-Clauses 6.6a. or 6.6b. the LICENSOR may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and the LICENSOR shall make a refund of the licence fee to the AUTHORITY, either in full or with the agreement of the AUTHORITY (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.

6.8        The conditions set forth in clauses 6.2 to 6.7 represent the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a third party, and take precedence over any other liability condition in the Licence.

**7.** **WARRANTY**

7.1. LICENSOR warrants that discrepancies between Licensed Software and the LICENSOR's specification or user documentation current at the time of delivery reported and demonstrated by the AUTHORITY during the warranty period stated in Part VII of the Schedule will be remedied by LICENSOR without unreasonable delay in a manner commensurate with good software industry practice and without payment by the AUTHORITY. During the warranty period the LICENSOR undertakes to provide to the AUTHORITY free of charge corrections to material errors known to the LICENSOR.

7.2. All warranties in the Licensed Software and its user documentation other than that given under Clause 7.1 are hereby excluded including, without limitation, the implied warranty and conditions of satisfactory quality and fitness for a particular purpose, but this shall not prejudice the right of the AUTHORITY to reject the Licensed Software in accordance with Clause 3.3.

7.3. No oral or written information or advice given by the LICENSOR, its agents or employees shall create a warranty or extend the scope of the warranty given under Clause 7.1.

7.4 The LICENSOR shall utilise all reasonable endeavours to ensure that any Licensed Software supplied, irrespective of the mode of delivery, is free from any published computer virus. In the event that it can be shown that, at the time of delivery, the Licensed Software incorporated such a virus then the AUTHORITY may require the LICENSOR to remove the virus and within the limits of backup data provided by the AUTHORITY to restore any computer system incorporating the Designated Equipment to its pre-infected state or bear the cost of the necessary restoration work.

**8.** **GENERAL LIABILITY CONDITIONS**

8.1 The LICENSOR shall have no liability to the AUTHORITY for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the AUTHORITY including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Licensed Software.

8.2 The exclusion provided under Clause 8.1 shall not apply where the AUTHORITY suffers loss because of a defect within the Licensed Software which defect is known to the LICENSOR at the time the Licensed Software is furnished to the AUTHORITY unless the AUTHORITY has previously been made aware of and accepted the presence of the defect and its relevance to the AUTHORITY’s application of the Licensed Software.

8.3 The total of the LICENSOR’s liability under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR's negligence, as provided by the Unfair Contracts Act 1977, and, except in relation to sub-Clause 13.2.2, no limitation shall apply in respect of any liability arising under the provisions of Clause 6.2.

**9.** **TERM AND TERMINATION OF THE LICENCE**

9.1. Each Licence shall continue until the AUTHORITY terminates it by written notification to the LICENSOR, or it is terminated pursuant to Clauses 3.4 or 6.7.

9.2. The AUTHORITY shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the AUTHORITY may on prior written authorisation from the LICENSOR retain one copy for archival purposes only. The AUTHORITY shall promptly certify in writing once it has so done.

9.3. In the event of the LICENSOR drawing the attention of the AUTHORITY to a breach of any condition of a Licence then:

a. where the breach is of a nature that cannot be remedied, the AUTHORITY undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur,

b. where the breach is capable of being remedied, the AUTHORITY shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The AUTHORITY shall indemnify the LICENSOR for all loss and damage incurred by it as a result of the breach.

9.4 The termination of any Licence shall be without prejudice to the continuation of the Head Agreement or any other Licence under it.

**10.** **COMBINATION OF SOFTWARE**

10.1. The AUTHORITY may combine all or part of the Licensed Software with other materials to form a new work. Any portion of the Licensed Software included in a new work shall be Used only on Designated Equipment and shall be subject to the conditions of the Licence. The LICENSOR shall be absolved from any obligation or liability under the Licence to the extent that this arises as a result of the creation or use of any new work not approved in writing by the LICENSOR.

**11.** **OUTPUT**

11.1. The AUTHORITY may freely copy and utilise any output resulting from Use in accordance with LICENSOR - supplied documentation of the Licensed Software.

12. **DISPUTES**

12.1 Other than for any claim arising from non- payment of a valid invoice should any question, dispute or difference whatsoever arise between the AUTHORITY and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).

12.2 Upon receipt of the ADR notice and subject to sub-Clause 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the AUTHORITY and the LICENSOR, however, the costs of arbitration shall be settled by the arbitrator.

12.3 Where a Party rejects the referral of the matter to ADR he shall promptly notify the other Party in writing of that rejection and the reasons for it.

**13** **TRANSFER**

13.1 The LICENSOR shall not assign his interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the AUTHORITY’S rights under the Licence and without notifying the AUTHORITY in writing of the identity of the assignee.

13.2 Unless prevented by law or national regulation the AUTHORITY shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:

13.2.1 following a transfer from the AUTHORITY to the legal entity of any function of the AUTHORITY for which the Licensed Software has been obtained; or

13.2.2 on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied “as is”, and the liability referred to in Clause 8.3 shall be ten pounds sterling only.

PROVIDED THAT the Licensed Software novated in accordance with this sub-Clause may only be used for the same purposes for which the Authority was licensed in accordance with Clause 2 and wider use shall require the written approval of, and the grant of a further licence by, the LICENSOR.

**14** **DISCONTINUANCE OF BUSINESS**

14.1 The AUTHORITY shall have the right to secure from the LICENSOR, or from the authorised trustees or receivers acting on behalf of the LICENSOR, in the event of the LICENSOR permanently ceasing to maintain the Licensed Software or the LICENSOR permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the LICENSOR to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the LICENSOR, but no more than the LICENSOR uses themselves, as the AUTHORITY shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.

14.2 If so required by a Special Condition, the LICENSOR shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the AUTHORITY is entitled under Clause 14.1 which copy shall be held by the LICENSOR as a bailee without lien for the AUTHORITY and be made available to the AUTHORITY without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the AUTHORITY’s demand and it shall be made available to the AUTHORITY at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.

14.3 The AUTHORITY shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The AUTHORITY shall hold in confidence all information in the documentation.

**15** **GENERAL**

15.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:

a. that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and

b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.

15.2 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.

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

15.4 Neither the LICENSOR nor the AUTHORITY shall be liable for failure to perform any of their obligations under the Licence if that failure results from circumstances beyond their reasonable control.

15.5 Headings have been included for convenience only and shall not be used in construing any condition of the Licence.

15.6 The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.

15.7 The Licence shall constitute the entire agreement between the Parties relating to the Licensed Software and supersedes any previous agreement.

15.8 No right is granted to any person who is not a Party to the Licence to enforce any term of the Licence in their own right and the Parties declare that they have no intention to grant any such right.

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**Special Indemnity Conditions**

DEFCON 632 (Edn 06/21) - Third Party Intellectual Property - Rights and Restrictions

**45 Special conditions that apply to this Contract**

**45.1 OPTIONS**

45.1.1. The option prices detailed below are firm prices not subject to variation.

45.1.2. In addition to the Items 1, 2 and 3 at Schedule 2 - Schedule of Requirements for Contract, the Contractor hereby grants to the Authority the following irrevocable options to purchase in accordance with the Annex A Schedule of Requirements of this contract and as referenced in Schedule 2 Schedule of Requirements, it being agreed that the Authority has no obligation to exercise such options.

a. Option 1: Support and maintenance solution at Item 4 of Schedule 2 - Schedule of Requirements for Contract provided that the Authority notifies the Contractor that the option will be exercised by no later than 30 calendar days before the SAT Report is due. The option shall not commence until the Authority has accepted the SAT Report.

b. Option 2: Importation and Exportation (where applicable) at Item 5 of Schedule 2 - Schedule of Requirements. Notwithstanding the requirements at Condition 32 of this contract, the Authority shall notify the Contractor within one month of contract award whether the responsibility for arranging customs clearance lies with the Contractor or the Authority.

45.1.3. The Authority shall have the right to exercise the options within the Contract Period or within such further period as corresponds to the aggregate of any period(s):

a. of delay in the delivery programme whether constituting any breach of the Contract or resulting from any force majeure event or,

b. for the duration of which the Authority is prevented from exercising any such option due to any other breach of the Contract by the Contractor.

45.1.4 The Authority shall not be obliged to exercise the options.

**45.2 PAYMENT**

45.2.1. Payment shall be claimed on completion of the work for each Stage Payment as set out in the Table 1 Stage Payment Schedule of Condition 45.3, and in accordance with the Statement of Requirement at Annex A to Schedule 2 [contained in a separate document], to the satisfaction of the Authority's Project Manager.

**45.3 STAGE PAYMENTS**

45.3.1. The Authority shall, subject to the following provisions of this condition, make to the contractor advances against the price(s) payable for Stage Payments (‘interim payments’) in accordance with Table 1 Stage Payment Schedule of this condition 45.3.

45.3.2. The contractor shall be entitled to interim payments, to be claimed in accordance with condition 35 for each stage under Table 1 Stage Payment Schedule of this condition 45.3, provided that:

a. the contractor has completed all work comprised in the stage for which the interim payment is sought in accordance with Table 1 Stage Payment Schedule of this condition 45.3;

b. all previous stages have been completed, unless the parties expressly agree otherwise; and

c. the contractor shall have complied with all its contractual obligations which enable the Authority to monitor the contractor’s contractual performance, including but not limited to those obligations related to the provision of information to the Authority.

45.3.3. Notwithstanding clause 45.3.2 above, the Authority shall not be obliged to make an interim payment to the contractor if it has reasonable cause to believe that the contractor will be unlikely to render complete performance of its obligations in respect of Table 1 Stage Payment Schedule of this condition 45.3.

45.3.4. Where the Authority intends to rely on clause 45.3.3 above as the basis for rejecting any claim for an interim payment which the contractor may make, the Authority shall give to the contractor notice in writing of its intention together with reasons and justification for the rejection.

45.3.5. The Authority shall without prejudice to any other right / remedy of either party be entitled to recover in full all interim payments made under the contract where:

a. the contract, or the part of the contract under which the Stage Payments at Table 1 Stage Payment Schedule of this condition 45.3 are to be provided, is terminated otherwise than in accordance with Condition 42, or expires by reason of passing of time; and

b. the contractor has failed to complete performance of the Stage Payments at Table 1 Stage Payment Schedule of this condition 45.3.

45.3.6. In the event of repayment to the Authority under the provisions of clause 45.3.5 above then all that, which vested in the Authority, under the provisions of DEFCON 649 (Vesting) and which related to the Stage Payments at Table 1 Stage Payment Schedule of this condition 45.3 shall re-vest in and become the absolute property of the contractor.

45.3.7. Payment of an interim payment by the Authority under this clause 45.3.7 shall not, unless expressly stated to do so, constitute:

a. acceptance by the Authority of any contractual deliverable;

b. a representation by the Authority that the contractor has complied with any contractual obligations; or

c. a waiver of the Authority’s right to subsequently claim that the conditions for payment of that interim payment were not satisfied.

* + 1. The Authority’s preference is for the FAT Report at Stage Payment number 4a at Table 1 Stage Payment Schedule of this condition 45.3 be delivered on or before 31 March 2022 but it must be delivered by 31 May 2022. If the Contractor delivers and the Authority accepts (in accordance with Schedule 8 - Acceptance Procedure) the FAT Report earlier than 31 May 2022 then the Contractor may claim payment in advance of 31 May 2022.
    2. Subject to clause 45.3.8 above, if the Contractor delivers the FAT Report early then the Authority will amend the Stage Payment delivery dates of the Project Progress Update Reports so that they remain quarterly from delivery of the FAT Report. Similarly, Stage Payments 9-11 will also be pulled forward if the Authority’s ACFT becomes available before 31 May 2023. If Item 4 (Option 1) of Schedule 2 is invoked, Stage Payment 15 will always remain unchanged regardless of any alternations to previous Stage Payment delivery dates.

**Table 1: Stage Payment Schedule**

45.3.10 Table 1 below includes all contractual Options in accordance with Condition 45.1. If an Option is not taken up, the Firm Price of the Stage Payment will be reduced to the level stated in the table below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **No.** | **Milestone** | **Date** | **Percentage** | **Value ex VAT** |
| 1 | Project Progress Update Report | No later than 28 February 2022 | 2.00% | £24,600.00 |
| 2 | **Delivery of FAT Report** | No later than 31 March 2022 | 50% | £615,000.00 |
| 3 | Project Progress Update Report | No later than 30 June 2022 | 2.00% | £24,600.00 |
| 4 | Project Progress Update Report | No later than 30 September 2022 | 2.00% | £24,600.00 |
| 5 | Project Progress Update Report | No later than 31 December 2022 | 2.00% | £24,600.00 |
| 6 | Project Progress Update Report | No later than 31 March 2023 | 2.00% | £24,600.00 |
| 7 | **Delivery of SAT Report** | No later than 31 May 2023 | 30% | £369,000.00 |
| 8 | Project Progress Update Report | No later than 30 June 2023 | 2.00% | £24,600.00 |
| 9 | **Delivery of Training Material** | No later than 31 July 2023 | 2.00% | £24,600.00 |
| 10 | Project Progress Update Report | No later than 30 September 2023 | 2.00% | £24,600.00 |
| 11 | Project Progress Update Report | No later than 31 December 2023 | 2.00% | £24,600.00 |
| 12 | Project Progress Update Report | No later than 31 March 2024 | 2.00% | £24,600.00 |
|  |  |  | **100%** | **£1,230,000.00** |

**45.4 LIMITATIONS ON LIABILITY**

**Definitions**

45.4.1 In this Condition 45.4 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

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

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

* 1. the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "UK General Data Protection Regulation" or “UK GDPR”);
  2. the Data Protection Act 2018;
  3. the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
  4. all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy [and the guidance and codes of practice issued by the Information Commissioner’s Office which apply to a party];

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

“Law” means any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in [not applicable];

“Term” means the period commencing on [the commencement date / the date on which this Contract is signed / the date on which this Contract takes effect] and ending [on the expiry of x years /on x date] or on earlier termination of this Contract.

**Unlimited liabilities**

45.4.2 Neither Party limits its liability for:

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

1.2.2 fraud or fraudulent misrepresentation by it or its employees;

1.2.3 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

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

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

1.3.1 for any indemnity given by the Contractor to the Authority under this Contact, including but not limited to DEFCON 632 (Edn. 06/21) - Third Party Intellectual Property - Rights and Restrictions;

1.3.2 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and Condition 33 (Third Party IP – Rights and Restrictions);

1.3.3 the Contractor's indemnity in relation to TUPE at Schedule [ (TUPE)];

1.3.4 breach by the Contractor of DEFCON 532A (SC2) and Data Protection Legislation; and

1.3.5 [not used]

1.4 The financial caps on the Authority's liability set out in Clause 1.6 below shall not apply to the following:

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

1.4.2 the indemnity given by the Authority in relation to TUPE under Schedule [N/A] shall be unlimited; and

1.4.3 [not used]

**Financial limits**

1.5 Subject to Clauses 1.2 and 1.3 and to the maximum extent permitted by Law:

1.5.1 [throughout the Term] the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

* + in respect of DEFCON 76 (SC2) [£ two hundred thousand] (£200,000) in aggregate;
  + in respect of Condition 42b [£ one million, two hundred and twenty-three thousand, six hundred] (£1,223,600) in aggregate
  + in respect of DEFCON 611 (SC2) [£ three hundred and sixty thousand] (£360,000) in aggregate; and
  + in respect of condition 27d [£ one hundred thousand] (£100,000) in aggregate;

1.5.2 without limiting Clause 1.5.1 and subject always to Clauses 1.2, 1.3, 1.3.5 and 1.5.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with [not applicable] and [not applicable], whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [£ pounds] (£[ ]) in aggregate.

1.5.3 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 1.5.1 and 1.5.2 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 1.5.1 and 1.5.2 of this Contract.

1.6 Subject to Clauses 1.2, 1.4, 1.4.3 and 1.7, 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.

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

**Consequential loss**

1.8 Subject to Clauses 1.2, 1.3 and 1.9, 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:

1.8.1 indirect loss or damage;

1.8.2 special loss or damage;

1.8.3 consequential loss or damage;

1.8.4 loss of profits (whether direct or indirect);

1.8.5 loss of turnover (whether direct or indirect);

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

1.8.7 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.

1.9 The provisions of Clause 1.8 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:

1.9.1 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;

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

1.9.3 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);

1.9.4 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;

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

1.9.6 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;

1.9.7 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);

1.9.8 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

1.9.9 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**

1.10 If any limitation or provision contained or expressly referred to in this Condition 1.10 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 1.10.

**Third party claims or losses**

1.11 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 33 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:

1.11.1 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

1.11.2 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**

1.12 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.

**45.5 SOCIAL VALUE PERFORMANCE INDICATORS**

45.5.1 The Social Value Performance Indicator Targets are determined in the Contractor’s tender response for this requirement and set out at Table 1 to this Condition 45.5 against the three Social Value Themes; Tackling Economic Inequality, Fighting Climate Change, and Equal Opportunity.

45.5.2 The Contractor shall report progress against the Social Value Performance Objectives at Table 1 below to the Authority at each Project Review Meeting, (para 3.1.1.5 of Statement of Requirement at Annex A to Schedule 2 refers).

**Table 1: Social Value Performance Objectives**

|  |  |  |
| --- | --- | --- |
| **Social Value Theme** | **Reporting Metrics** | **Performance Indicator Targets** |
| Theme 2 Tackling Economic Inequality | Evidence of the Framework Contractor’s progress towards the following:-  ● For each of the following categories:  ○ start-ups  ○ SMEs  ○ VCSEs; and  ○ mutuals:  ■ The number of contract opportunities awarded under the contract.  ■ The value of contract opportunities awarded under the contract in £.  ■ Total spend under the contract, as a percentage of the overall contract | 1.) The number of contract opportunities awarded under the contract to each supplier, 11 Contracts by December 2021  2.) The value of contract opportunities awarded under the contract to each supplier £749,116 by December 2021.  3.) Total Spend under the contract, as a percentage of the overall contract 60% (96% of which for the UK supply chain) by December 2021 |
| Theme 3: Fighting climate change | Evidence of the Framework Contractor’s progress towards the following:-  ● Number of people-hours spent protecting and improving the environment under the contract, by UK region. | 1.) Number of people-hours spent protecting and improving the environment under the contract, by UK region, 2,240 hours by March 2023 |
| Theme 4: Equal opportunity | Evidence of the Framework Contractor’s progress towards the following:-  ● Percentage of all companies in the supply chain under the contract to have committed to the five foundational principles of good work.  ● Number of companies in the supply chain under the contract to have committed to the five foundational principles of good work.  ● Percentage of the supply chain for which supply chain mapping has been completed to the appropriate tier or to source in order to reduce the risks of modern slavery.  ● Number of people-hours devoted to supporting victims of modern slavery under the contract. | 1.) Percentage of all companies in Spirent’s supply chain under the contract to have committed to the five foundational principles of good work, 100% by December 2021.  2.) Number of companies in Spirent’s supply chain under the contract to have committed to the five foundational principles of good work, All 4 of Spirent’s Tier 1 Suppliers by December 2021.  3.) Percentage of the supply chain for which supply chain mapping has been competed to the appropriate tier or to source in order to reduce the risks of modern slavery, 100% by December 2021.  4.) Number of people-hours devoted to supporting the victims of modern slavery under the contract, 2,240 hours by March 2024. |

45.5.3 The Authority will rate Contractor’s progress under each Performance Indicator Target according to scoring methodology in Table 2 below.

**Table 2: Social Value Performance Indicators Scoring Methodology**

|  |  |  |
| --- | --- | --- |
| **Rating** | **Description** | **Score** |
| **Good (the Required Standard)** | The Contractor is meeting or exceeding the PI targets that are set out in Table 1 of this Condition 45.5. | 95- 100% |
| **Approaching Target** | The Contractor is close to meeting the PI targets that are set out in Table 1 of this Condition 45.5. | 90- 94.9% |
| **Requires Improvement** | The performance of the Contractor is below that of the PI targets that are set out in Table 1 of this Condition 45.5. | 85.1- 89.9% |
| **Inadequate** | The performance of the Contractor is significantly below that of the PI targets that are set out in Table 1 of this Condition 45.5. | Below 85% |

45.5.4 The Contractor shall present any mitigating evidence for not achieving the Required Standard and present a rectification plan for how the Required Standard will be met during the next reporting period at the Project Review Meeting for the Authority’s consideration. The Authority will not unreasonably reject such mitigating evidence. Where the mitigating evidence and rectification plan are acceptable to the Authority, the Contractor shall receive relief from his obligation to meet the Required Standard of the affected PI for the affected period.

45.5.5 Where the Contractor cannot demonstrate to the satisfaction of the Authority, that failure to meet the required standard is reasonable and that the rectification plan gives confidence that the Required Standard will be met during the next reporting period then then obligation to meet the Required Standard remains unaffected. The Authority’s decision in this respect will be final.

45.5.6 Subject to clause 45.5.5 above, if the Contractor fails to meet the Required Standard in any PI at three consecutive Project Review Meetings, the appropriate senior-level personnel from both parties will meet to discuss a mutually acceptable rectification plan. The Authority shall escalate the issue up to a maximum of 1\* Commercial level.

45.5.7 Where the parties cannot reach an agreement following senior-level escalation, Condition 39 Dispute Resolution shall be invoked.

**45.6 KEY PERFORMANCE INDICATORS (KPIS) FOR SUPPORT AND MAINTENANCE TO THE SIMULATOR SYSTEM**

45.6.1 If contractual Option 1 for Support and Maintenance to the Simulator System at Item 4 of Schedule 2 Schedule of Requirement is invoked by the Authority, the Contractor’s performance against delivery of that Option will be monitored through Key Performance Indicators (KPIs) at Table 1 to this clause 45.6.

45.6.2 The Contractor shall report his progress against the KPIs for the Authority’s review at each Project Review Meeting. The Contractor’s performance will be rated by the Authority under each KPI according to Table 1 below:

**Table 1: KPI’s**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **KPI Theme** | **KPI** | **Good (the Required Standard)** | **Approaching target** | **Requires improvement** | **Inadequate** |
| The Contractor shall deliver a support solution that provides a technical helpline and repair facility that guarantees minimal Simulator System downtime. | 24-hour response time for all support queries between the hours of 0800 to 1700 on working days. | 95- 100% | 90- 94.9% | 85.1- 89.9% | Below 85% |
| System is fully operational within 5 working days OR  System is fully operational within 2-4 working days [as agreed in Contractor’s tender] | 95- 100% | 90- 94.9% | 85.1- 89.9% | Below 85% |

45.6.3 Where the Contractor is rated as ‘Good’ in both of the KPIs during the reporting period, the Authority will pay the Contractor the agreed Stage Payment for the period in accordance with Condition 45.3.

45.6.4 The Contractor shall present any mitigating evidence for not achieving a ‘Good’ rating and present a rectification plan for how the Required Standard will be met during the next reporting period at the Project Review Meeting for the Authority’s consideration. The Authority will not unreasonably reject such mitigating evidence. Where the Contractor’s performance is rated as less than ‘Good’ (i.e ‘Approaching Target’, ‘Requires Improvement’ or ‘Inadequate’) in any KPI the Contractor and the Authority judged the mitigating evidence to be acceptable, the Contractor shall receive relief from his obligation to meet the Required Standard of the affected KPI for the affected period and- subject to meeting all other requirements- payment shall not be withheld.

45.6.5 Where the Contractor cannot demonstrate to the satisfaction of the Authority, that failure to meet the required standard is reasonable then obligation to meet the Required Standard remains unaffected. The Authority’s decision in this respect will be final.

45.6.6 Subject to clause 45.6.5 above, if the Contractor fails to meet the Required Standard in any KPI at two consecutive Project Review Meetings, the Authority will withhold 10% of the payment associated Stage Payments at Table 1 Stage Payment Schedule of condition 45.3.

45.6.7 Without prejudice to the Authority’s rights and remedies under the Contract, the Contractor will be paid any previously withheld Stage Payments, in addition to the Stage Payments due for that period, if and when his performance is remedied and he has met or exceeded the Required Standard in all of the KPIs for the period.

45.6.8 Termination under this Condition: for a termination based on failure to meet and maintain the Required Standard in all KPIs a “material breach” shall be deemed to have occurred where the Contractor fails to remedy his performance, such that he continues to be rated as ‘Approaching Target’, ‘Requires Improvement’ or ‘Inadequate’ in any KPI, failing to meet or exceed the Required Standard, at two consecutive Project Review Meetings following the initial withholding of a Stage Payment. Where a “material breach” has occurred, the Authority reserves the right to terminate the Contract.

45.6.10 Where the Contractor’s performance gives rise to the right of termination the Contractor shall not receive any withheld monies from the Stage Payments for the period that lead to such termination. For the avoidance of doubt, the Contractor shall retain Stage Payments received for previous quarters wherein the Required Standard was achieved and/or exceeded and payment duly made.

**45.7 Government Furnished Assets:**

**Access to MoD Boscombe Down**

45.7.1 Subject to clause 45.7.1.1 below and with reference to DEFCON 76, the Authority will grant access to the Contractor to the Anechoic Chamber at MoD Boscombe Down for the purpose of installation, support and maintenance of the Simulation System.

45.7.1.1 The Authority reserves the right to refuse access to MoD Boscombe Down to any Contractor personnel who are not BPSS cleared or have failed Security Clearance checks.

45.7.1.2 Notwithstanding the provisions at clause 45.7.1.1 above, the Contractor will not be held liable for a failure to deliver his contracted services arising as a consequence of a failure by the Authority, to supply access to MoD Boscombe Down, provided the contractor has taken all reasonable steps to mitigate the impact of such a failure.

**Issued property**

45.7.2 If Item 3 (Option 1 for support and maintenance) of Schedule 2 Schedule of Requirements is invoked, articles may be required to be issued under the provision of DEFCON 611 to the Contractor for the purpose of repair and maintenance and shall be subject to reporting under DEFCON 694. Any such items will be recorded in the table at clause 45.7.3 below.

**45.7.3 Table- Issued GFA**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Description** | **Quantity** | **Date of supply** | **Date of return** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**45.8 Transportation**

45.8.1 The Contractor shall be responsible for transportation of goods supplied under the Contract for the duration of the contract- Condition 27 refers. For the avoidance of doubt, if Item 5 (Option 2) of Schedule 2 is invoked by the Authority, the Contractor shall be responsible for transportation of items which require removal from or bringing to MoD Boscombe Down for the purpose of supporting and maintaining the Simulator System.

**46.9 Project Financial Management Reports**

46.9.1. The Contractor Shall deliver Project Financial Management reports to the Authority in accordance with section 3 of Statement of the Requirements at Annex A to Schedule 2 [contained in a separate document].

46.9.2. The Contractor shall ensure that the reports use the instructions and template at Table 1 and Appendix 1 of Table 1 of this Condition 46.9.

46.9.3. The Contractor shall include monthly storage costs of the Simulator System to the Authority with evidence of monthly storage costs incurred during the given period.

**Table 1 – Project Financial Management Reporting Template Instructions**

|  |  |  |
| --- | --- | --- |
| **Financial Management Reports to be Provided by Suppliers** | | |
|  |  |  |
| 1 |  | **Provision of Information** |
|  | a | 1st Report to be provided within 20 working days of the Effective Date of the contract. |
|  | b | Report to be provided as stated in the contract on UK MOD working day 3 or by exception thereafter. |
|  | c | Requirement does not subsitute or replace any requirements under EVM, DEFCON 694 (GFA) or any other DEFCON, providing that delivery of that information is linked to key performance indicators and cash payments to the supplier. |
|  | d | Financial Information to be provided VAT Exclusive. |
|  | e | All reports to be endorsed by the contractor representative, recognising that accruals are estimates, but confirming that the report reflects their judgement of the activity on the contract |
|  |  |  |
| 2 |  | **Contract Summary Information** |
|  | a | Contract Number. |
|  | b | Contract Title. |
|  | c | Supplier Name. |
|  | e | Original Contract Price Excluding VAT (at contract start date). |
|  | f | Revised Contract Price (to reflect any agreed contract amendments) Excluding VAT. |
|  | g | Nature of Pricing - e.g firm, fixed, target cost incentive fee. |
|  | h | Currency. |
|  | i | Report Date. |
|  |  |  |
| 3 |  | **Information to be Provided** |
|  | a | Minimum granularity is contract schedule lines. [May be extended to reflect, for example,KPI, Milestones, Activities, Items, NSNs.] It is noted that in some circumstances contract schedule lines may not be appropriate (e.g. commodity items) and may need to be grouped. |
|  | b | Inventory information (if applicable) to separately identify service charge and purchases of inventory [required for all on-Statement of Financial Position, Off System Inventory CLS arrangements]. |
|  | c | Description. |
|  | d | Value (Ex VAT) - contractual value of the activity. |
|  | e | Progress % work completed on the activity as at report date. |
|  |  |  |
| 4 |  | **Financial Profile** - The report is to collect information on actual and planned accruals: that is the contractual value of work undertaken (earned value of work) within a period, for which the MOD will be [was] liable to pay. It includes work undertaken by sub-contractors. It includes work completed and invoiced. The total value of work [to be] completed is expected to be comparable to the contract price. If a fixed or firm price has been agreed for the contract then the value of work should be assessed on this basis. |
|  | a | Prior Years: Work completed (value to sales) in previous financial years. |
|  | b | Earned Value: Work completed (value to sales) in month - this is the value of work done (accrued/earned value) during that calendar month. |
|  | c | Earned Value: Cumulative Work Completed (value to sales) - this is the value of work done (accrued/earned value) on the activity to date. |
|  | d | MOD Current Financial Year monthly - this will be a mix of actual completed to the end of the current period and forecast beyond that date. |
|  | e | After the Current Financial Year an annual estimate by MOD Financial Year (Apr XX to Mar XY) until contract end date - Forecast periods show the expected work to be undertaken during each period on the activities in the contract. Insert additional years as required. |
|  |  |  |
|  |  |  |
| Note: Accruals represent the earned value or work the contractor has completed to date. | | |

**Appendix 1 to Table 1 – Example Project Financial Management Reporting Template**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  | **Original Contract price:** | |  |  |  |  |  | |  |  | | |  | | |  | | |  | | |
| **Contract No:** | **xxxxx** | **Description:** | **xxxxxx** | **Supplier:** | **xxxxxx** | **xxxxxx** |  | **Report Date:** |  | **02-Jul-21** | |  |  | | |  | | |  | | |  | | |
|  |  |  |  |  |  | (Ex VAT)  **Revised Contract price:** | |  |  | **Currency:** |  | £ UK Sterling | | | |  | | |  | | |  | | |  | | |
| **Financial Management Report (Work Completion Plan) - £** | | | |  |  | xxx |  | **Nature of Pricing:** | | | e.g. firm/max | | | |  | | |  | | |  | | |  | | |
|  |  |  |  |  |  |  |  |  |  |  |  |  | |  | | | | | | | | | | | | | |
| **MILESTONE/ Activity/Item** | **Description** | **Value (Ex VAT)** | **Progress % Complete as at report date** |  | **Prior Years** | **Apr-21** | **May-21** | **Jun-21** | **Jul-21** | **Aug-21** | **Sep-21** | **Etc.** | | **ETC Annual Financial Year Estimates until Contract End Date** | **Total** | | |  | | |  | | |  | | |
| 1 |  |  |  | Work completed in month |  |  |  |  |  |  |  |  | |  |  | | |  | | |  | | |  | | |
|  |  |  |  | Cumulative Work completed |  |  |  |  |  |  |  |  | |  |  | | |  | | |  | | |  | | |
| 2 |  |  |  | Work completed in month |  |  |  |  |  |  |  |  | |  |  | | |  | | |  | | |  | | |
|  |  |  |  | Cumulative Work completed |  |  |  |  |  |  |  |  | |  |  | | |  | | |  | | |  | | |
| Total Work Complete |  |  |  |  |  |  |  |  |  |  |  |  | |  |  | | |  | | |  | | |  | | |
|  |  |  |  |  |  |  |  |  |  |  |  |  | |  |  | | |  | | |  | | |  | | |
|  |  |  |  |  |  |  |  |  |  |  |
| Contractor representative: | |  |  |  |  |  |  |  |  |  |
|  | This document is an estimate of the price of the work completed on this contract, and is based on my best judgement reflecting the information available to me. | | | | | | | | | |
|  | Name: |  |  | Signature: |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
|  | Position: |  |  | Date: |  |  |  |  |  |  |

**46 The Processes that apply to this Contract are:**

* 1. **Conversion of Maximum Price to Firm Price for Storage Costs of the Simulator System**

1. The Contractor shall provide storage of the Simulator System until the Authority’s Anechoic Chamber Test Facility (ACTF) is available- Section 6.1 of Statement Requirement at Annex A to Schedule 2 [contained in a separate document] refers. The required storage period shall not exceed 12 months from the delivery of the FAT Report (no later than 31 May 2023).

2. The Authority shall provide 1 month notice to the Contractor ahead of the ACTF being available.

1. Once notified, the Contractor shall deliver and install the Simulator System into the ACTF facility at MoD Boscombe Down in accordance with Section 6 of Statement Requirement at Annex A to Schedule 2 [contained in a separate document].
2. The Contractor shall then provide the Authority with evidence of storage costs incurred. The Authority will review the costs and if content that the evidence provided shows that the costs incurred are reasonable, shall convert the maximum price to a firm price and make payment to the Contractor within 30 days.
3. No payment for storage costs shall be made by the Authority prior to conversion of the maximum price to a firm price.

**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** |  |
| **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 Information** | means the Information listed in the completed 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](http://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 Packagingdesigners 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 Symbologies which can be sourced at [https://www.dstan.mod.uk/faqs.html](http://www.dstan.mod.uk/faqs.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. |

**Annex to Schedule 1**

**Additional Definitions of Contract iaw. Conditions 44 - 46 (Additional Conditions)**

[Not used]

# Schedule 2 - Schedule of Requirements for Contract No: 701575421

**For Global Navigation Satellite System**

**Simulator System for the**

**Anechoic Chamber Test Facility**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Contractor Deliverables** | | | | | | | | | |
| **Item Number** | **MOD Stock Reference No.** | **Part No. (where applicable)** | **Specification** | **Consignee Address Code** (full address is detailed in DEFFORM 96) | **Packaging Requirements inc. PPQ and DofQ** (as detailed in DEFFORM 96) | **Delivery Date** | **Total Qty** | **Price (£) Ex VAT** | |
| **Per Item** | **Total inc. Packaging**  **(and Delivery if specified in Schedule 3 (Contract Data Sheet))** |
| 1 | N/A | N/A | Global Navigation Satellite Simulator System (Section 6 of Statement of Requirement at Annex A to Schedule 2) |  |  | No later than 31 May 2023 | 1 | £1,230,000.00  Firm Price | £1,230,000.00  Firm Price |
| 2 | N/A | N/A | Storage of Simulator System  (Section 6 of Statement of Requirement at Annex A to Schedule 2) |  |  | No later than 31 May 2023 | 1 | £0 Nil Cost | £0 Nil Cost  Max Price |
| 3 | N/A | N/A | Training and training materials for Global Navigation Satellite Simulator System (SS-1 and SS-2 of Appendix 1 to of Statement of Requirement at Annex A to Schedule 2) |  |  | No later than 31 July 2023 | 1 | £0 Nil Cost  Firm Price | £0 Nil Cost  Firm Price |
| 4 | N/A | N/A | OPTION 1: Contractor support and maintenance deliverables  (Section 8 of Statement of Requirement at Annex A to Schedule 2) |  |  | 31 March 2024 | 1 | £0 Nil Cost  Firm Price | £0 Nil Cost  Firm Price |
| 5 | N/A | N/A | OPTION 2:   1. Importation and exportation and customs clearance to/from MOD Boscombe Down and evidence that the Contractor can reclaim the import VAT incurred. 2. Importation and exportation clearance to/from MOD Boscombe Down |  |  | No later than;  a. 31 May 2022 and  b. 31 March 2024 if Option 1 (line 4) above is invoked). | 1 | £N/A  Firm Price | £N/A  Firm Price |
| 6 | N/A | N/A | Transportation to and from MOD Boscombe Down for Items 1-3 of Schedule 2 Schedule of Requirements |  |  | No later than 31 July 2023 |  | £0 Nil Cost  Firm Price | £0 Nil Cost  Firm Price |
| 7. | N/A | N/A | Transportation to and from MOD Boscombe Down for Items 4 of Schedule 2 Schedule of Requirements. |  |  | 31 March 2024 |  | £0 Nil Cost  Firm Price | £0 Nil Cost  Firm Price |
|  |  |  |  |  |  | **Total Price** | | | £1,230,000.00 |

|  |  |
| --- | --- |
| **Item Number** | **Consignee Address (XY code only)** |
|  |  |

Graphical user interface, text, application, chat or text message

Description automatically generated



**Annex A to Schedule 2 - STATEMENT OF REQUIREMENT**

**Global Navigation Satellite System**

**Simulator System for the**

**Anechoic Chamber Test Facility**

**V2.3**

**15 September 2021**

LIST OF ABBREVIATIONS

| **Abbreviation** | **Definition** |
| --- | --- |
| AC | Alternating Current |
| ACTF | Anechoic Chamber Test Facility |
| AES | Advanced Encryption Standard |
| AGL | Above Ground Level |
| AJ | Anti-Jam |
| ALARP | As Low As Reasonably Practicable |
| Az | Azimuth |
| BPSS | Baseline Personnel Security Standard |
| COTS | Commercial Off The Shelf |
| CRPA | Controlled Radiation Pattern Antenna |
| DoF | Degrees of Freedom |
| DSTL | Defence Science and Technology Laboratory |
| EGNOS | European Geospatial Navigation Overlay Service |
| El | Elevation |
| EME | Electromagnetic Environment |
| ES | Encrypted Signal |
| FAT | Factory Acceptance Test: A factory trial, demonstration or simulation conducted by the supplier at the supplier premises to demonstrate that the Simulator System complies with the Authority’s requirement contained within this Statement of Requirement. The Contractor shall carry out FAT of the Simulator System for the agreement by the Authority. |
| GNSS | Global Navigation Satellite System |
| GPS | Global Positioning System |
| GUI | Graphical User Interface |
| HAS | Hardened Aircraft Shelter |
| HS&EP | Health Safety & Environmental Protection |
| ICD | Interface Control Document |
| ILS | Integrated Logistic Support |
| IMU | Inertial Measurement Unit |
| IRNSS | Indian Regional Navigation Satellite System |
| ISSS | Information Set Safety Summary |
| ITAR | International Traffic in Arms Regulation |
| ITEAP | Integration Test Evaluation and Acceptance Plan |
| JSP | Joint Services Publication |
| MCOS | Multi Constellation Open Service |
| MGUE | M-Code GPS User Equipment |
| MoP | Measure of Performance |
| MOTS | Military Off The Shelf |
| NAVWAR | Navigation Warfare |
| NCSC | National Cyber Security Centre |
| OS | Open Signal |
| PMP | Project Management Plan |
| PNT | Position, Navigation and Timing |
| POEMS | Project Orientated Environmental Management System |
| POSMS | Project Orientated Safety Management System |
| PRS | Public Regulated Service |
| PSS | Products, Services and/or Simulator System |
| QZSS | Quasi Zenith Satellite System |
| REACH | Registration, Evaluation, Authorisation and restriction of Chemicals |
| RF | Radio Frequency |
| RGNS | Robust Global Navigation System |
| RHCP | Right Hand Circular Polarized |
| ROMP | Risk and Opportunity Management Plan |
| SAT | Site Acceptance Test: Installed performance testing conducted by the Contractor at the Authority’s ACTF premises at MoD Boscombe Down. The Contractor shall conduct SAT to confirm the Simulator System meets the installed performance requirements to the satisfaction of the Authority or its representative. |
| SBAS | Space Based Augmentation System |
| Simulator System | The Simulator System delivered by the Contractor shall comprise the GNSS Simulator System hardware and software including all necessary antennas, cables (excluding simulator to antenna cables), connectors, ancillaries (including any unique adaptors, connectors, jigs, tools and test aids required for its operation) and documentation to enable operation in the ACTF. |
| SIS | Signals In Space |
| SoR | Statement of Requirement |
| SQEP | Suitably Qualified and Experienced Personnel |
| SQuaRE | Software Product Quality Requirements and Evaluation |
| TEAS | Test, Evaluation and Acceptance Schedule |
| TEAP | Test, Evaluation and Acceptance Plan |
| TME | Test Measurement Equipment |
| UUT | Unit Under Test |
| WAAS | Wide Area Augmentation System |
| WEEE | Waste Electrical and Electronic Equipment |

Section 1 – Background

* 1. The UK Global Navigation Satellite System Project Office (UK GNSS PO) currently operates a Global Positioning Satellite (GPS) simulator capability in an Anechoic Chamber Test Facility (ACTF) at MoD Boscombe Down. This simulator is now obsolete and will be replaced with a Simulator System capable of supporting the full open service Global Navigation Satellite System (GNSS) constellations/signals and GPS P-Code/M-Code services. For the avoidance of doubt, acquisition of the new ACTF and Hardened Aircraft Shelter (HAS) in which the ACTF will be housed are outside of the scope of this requirement.
  2. This Statement of Requirement is for a GNSS Simulator System to be installed in the Authority’s new ACTF and will be used to provide a test capability for various GNSS receivers and Controlled Reception Pattern Antenna (CRPA) based Anti-Jam (AJ) systems within the ACTF. Operation of the Simulator System will be by personnel from Defence Science and Technology Laboratories (DSTL).
  3. The current ACTF is housed within a Hardened Aircraft Shelter (HAS) at MoD Boscombe Down and comprises a 7m dome fitted with appropriate Radar Absorbent Material (RAM) together with all necessary electrical supply services. It is expected that the new HAS that the Simulator System this requirement is to be delivered into will be of similar dimensions- see Appendix 3 to this Statement of Requirement for details. The new ACTF will also be located at MoD Boscombe Down.
  4. The operational context for the delivery of a GNSS capable ACTF Simulator System is to test, analyse and evaluate MoD platform Position, Navigation and Time (PNT) systems in a representative Navigation Warfare (NAVWAR) environment to inform PNT assurance, system validation and inform platform NAVWAR mitigation requirements.

**CONTRACTOR DELIVERABLES**

Section 2- technical

2.1 The Contractor shall deliver to the Authority and install in the Authority’s ACTF a Simulator System to the thresholds and, where confirmed in the Contractor’s tender, to the objectives as defined in Appendix 1 to this Statement of Requirement.

2.2 The Simulator System delivered by the Contractor shall comprise the GNSS Simulator System hardware and software including all necessary antennas, cables (excluding simulator to antenna cables), connectors, ancillaries (including any unique adaptors, connectors, jigs, tools and test aids required for its operation) and documentation to enable operation in the ACTF.

2.3 The Contractor shall deliver an Integration Test Evaluation and Acceptance Plan (ITEAP) within 10 days of contract commencement. The Contractor shall update the ITEAP as necessary and reissue to the Authority to reflect project changes and circumstances throughout the contract.

2.4 The Contractor shall deliver a Factory Acceptance Test (FAT) at its own premises and shall invite the Authority to attend. The FAT shall be a demonstration or simulation to demonstrate that the Simulator System complies with the Authority’s requirement contained within Appendix 1 of this Statement of Requirement. The FAT must be delivered by the date confirmed in the Contractor’s tender which shall either be on or before 31 May 2022.

2.5 Following the FAT, the Contractor shall provide a FAT Report which shall detail and explain the results of the FAT, specifying how it met the Authority’s requirement in Appendix 1 of the Statement of Requirement by the date confirmed in the Contractor’s tender which shall either be on or before 31 May 2022 .

2.6 Within 30 days from delivery of the FAT Report the Contractor shall deliver to the Authority the following:

2.6.1 Copies of all installed software in a suitable format for re-installation if required in CD, DVD or downloadable from an internet site

2.6.2 All licence information for supplied software including registration keys soft copy in MS Word format

2.6.3 A Simulator System Handbook in hard copy and soft copy in Microsoft (MS) Word and Adobe pdf format that shall contain, but not limited to the following:

2.6.3.1 Operator instructions

2.6.3.2 Installation and commissioning instructions including environmental operating parameters

2.6.3.3 Diagnostic procedures and maintenance schedules

2.6.3.4 Calibration procedure/schedule

2.6.3.5 Preventative/corrective maintenance schedules and procedures

2.6.3.6 Disposal guide

2.6.3.7 Illustrated parts catalogue showing all spared Line Replaceable Units (LRUs)

2.6.3.8 Modification and upgradeability details

2.6.3.9 Software user’s guide

2.6.3.10 Systems architecture and detailed design document

Section 3 Project Management

3.1 Project Progress Update Report

3.1.1 The Contractor shall deliver to the Authority’s Project Manager on a monthly basis until the FAT Report is delivered by the Contractor and accepted by the Authority and thereafter on a quarterly basis in either Microsoft Office, Adobe, or .pdf format, the following documents which shall be discussed as agenda items during the Project Review meetings at 3.2:

3.1.1.2 Project schedule;

3.1.1.3 Risk register;

3.1.1.4 Project Financial Management report;

3.1.1.5 Progress against the Social Value Performance Objectives at Table 1 of Condition 45.5 of the contract.

3.1.2 In addition to 3.1.1, if the Support and Maintenance Option is taken up, the Contractor shall deliver a report in either Microsoft Office, Adobe, or .pdf format on a quarterly basis a Quarterly Progress Report which details support and maintenance services/work that has been carried out in the previous quarter.

3.2 Project Review Meetings

3.2.1 The Contractor shall attend Project Review Meetings to be held virtually via either Skype or MS Teams on a monthly basis until the FAT Report is delivered by the Contractor and accepted by the Authority and quarterly thereafter. The Contractor shall take minutes of the meeting and submit for the Authority’s review within 5 working days before issuing the final version.

**SECTION 4 SAFETY AND ENVIRONMENTAL**

4.1 The Contractor shall be compliant with and provide management of safety information for proprietary Commercial Off The Shelf (COTS) in accordance with the principles of Def Stan 00-56.

4.2 The Contractor shall be compliant with applicable environmental standards as set out in Appendix 2 of this Statement of Requirement.

**SECTION 5 SECURITY**

5.1 The Contractor shall ensure all their staff who will undertake work on this contract have passed BPSS checks.

5.2 As requested by the Authority, the Contractor shall provide details on the Contractor’s staff for the Authority to carry out SC checks.

5.2 The Authority reserves the right to refuse access to MoD Boscombe Down to any Contractor personnel who are not BPSS cleared or have failed Security Clearance checks.

**SECTION 6 STORAGE, INSTALLATION AND SAT**

6.1 The Contractor shall provide suitable secure storage of the Simulator System and ancillaries for up to 12 months from the delivery of the FAT Report ahead of the Authority’s new ACTF being available.

6.2 The Authority will notify the Contractor when the new ACTF is available and the Contractor shall deliver and install the Simulator System in the ACTF facility at MoD Boscombe Down and conduct a Site Acceptance Test (SAT) within 1 month of the Authority’s notification.

6.3 The Contractor shall provide a SAT Report which shall detail and explain the results of the SAT, specifying how it met the Authority’s requirement in Appendix 1 of the Statement of Requirement within 1 month of the SAT.

### SECTION 7 DISPOSAL OF DEFECTIVE PARTS

7.1 The Contractor shall be responsible for identification, removal and any necessary disposal of defective parts (with the exception of the Authority’s removable drive in item SR-22 of Appendix 1 of this Statement of Requirement, which remain the responsibility of the Authority to manage).

SECTION 8 – OPTION: support and maintenance

8.1 Following delivery of the SAT Report, the contract may be extended at the discretion of the Authority to 31 March 2024 to provide for the Contractor to deliver support and maintenance services to the Simulator System in accordance with SS-3 of Appendix 1 of this Statement of Requirement. Support and maintenance shall cover all elements of the delivered Simulator System including the software, hardware, firmware, ancillaries and any factory recalibration. The Contractor shall provide resources required to correct a deficiency or design error, incorporate an enhancement, or respond to a hardware/software change or manage obsolescence.

**APPENDIX 1: SIMULATOR SYSTEM SPECIFICATIONS**

| **ID** | **Simulator System Requirement** | **Measures of Performance** | | **Demonstrated at [followed by FAT Report/ SAT Report delivered to the Authority]** |
| --- | --- | --- | --- | --- |
|  |  | **Threshold** | **Objective** |  |
| SR-1 | The simulator system shall broadcast signals that replicate those emitted by all current GNSS constellations. | GPS:  All open signals  P Code  AES M-code  Galileo:  All open signals  Pseudo PRS  GLONASS:  All open signals  Beidou:  All open signals | As threshold plus:  SBAS including IRNSS, QZSS, EGNOS and WAAS.  Galileo High Accuracy Service. | FAT |
| SR-2 | The simulator system shall broadcast signals across all frequency bands emitted by current GNSS constellations. | 1559MHz – 1612MHz (GNSS L1/E1 band)  1215MHz – 1256MHz (GNSS L2 band)  1160MHz – 1214MHz (GNSS L5/E5 band) | As threshold plus:  1260 - 1300 MHz (GNSS E6 band).  2483 – 2501 MHz (IRNSS S-Band) | FAT |
| SR-3 | The simulator system shall simultaneously and synchronously broadcast the signals and frequencies aligned with these requirements. | Simultaneous broadcast of signals and frequencies from all satellites 'in view' at a given place and time across all implemented GNSS constellations. | N/A | FAT |
| SR-4 | The simulator system shall allow the independent selection and deselection of any individual signal and frequency. | Selection of any combination of implemented signals in SR-1 and frequencies from all satellites 'in view' at a given place and time. | As threshold plus:  Dynamic 'in-run' selection and deselection of signals and frequencies. | FAT |
| SR-5 | The simulator system shall be controlled via a single User Interface | Single GUI for run-time control  Additional applications/files for lower level set-up is acceptable (e.g. parameter files, calibration, etc.).  The simulator system shall not incur unreasonable physical strain on the user to view or operate the simulator system. | As threshold plus:  Single GUI which allows set-up of:   * Calibration * Generation and tuning of all low level parameters * Control / Display of data from external systems * Batch processing / Auto running scenarios | FAT |
| SR-6 | The simulator system shall generate the necessary number of independently controlled Radio Frequency (RF) outputs to drive broadcast antennas representing the geometry of the Pseudo GNSS constellation to within a defined angular error. | The maximum angular error between the simulated satellite and the physical broadcast antenna position is 15° measured from the chamber centre (1m Above Ground Level - AGL) for the entire validity period. | The maximum angular error between the simulated satellite and the physical broadcast antenna position is 12.5° measured from the chamber centre (1m AGL) for the entire validity period. | SAT |
| SR-7 | The simulator system shall broadcast signals for all satellites ≥7° above the simulated horizon at 1m AGL at the chamber centre. | 7° | All satellites ≥ 0° | SAT |
| SR-8 | The simulator system shall allow valid testing compliant with all requirements continuously for at least 40 minutes. | 40 minutes | Greater than 24 hours | SAT |
| SR-9 | The simulator system shall replicate signals emitted by all satellites visible to a receiver at a given place and time. | Fixed location (MoD Boscombe Down ACTF)  Fixed date and time period. | Global  24/7/365 (throughout the entire day, and on every day of the year) | SAT |
| SR-10 | The simulator system shall provide the required Right Hand Circular Polarised (RHCP) GNSS broadcast antennas covering all implemented frequency bands. | The simulator system shall provide the required Right Hand Circular Polarised (RHCP) GNSS broadcast antennas covering all implemented frequency bands. | N/A | SAT |
| SR-11 | The simulator system shall provide the ability to input almanac; ephemeris; Ethernet motion and file transfer motion data, and output platform state data. | Input:  Almanac (All constellations)  Ephemeris (RINEX)  Ethernet Motion (9DOF)  File transfer Motion (9DOF)  Output:  Platform state (PVT, Accel, Attitude, etc.) file | As threshold plus:  Input:  In-run ephemeris updates via external source.  Output:  Platform state (PVT, Accel, Attitude, etc.) live stream | FAT |
| SR-12 | The simulator system shall provide the ability to emulate platform motion in 9 Degrees of Freedom (DOF).  Note that the Authority will not provide dynamic models for representative platforms. | Internally generated basic motion elements (including but not limited to):  •Static  •Acceleration  •Straight  •Turns  •Climb  •Halt  External motion input via:  •Pre-recorded user motion.  •Real-time control via external interface.  100Hz minimum update rate | As threshold plus:  Internally generated dynamic models:  •Land  •Maritime (including emulation of sea state)  •Air (fixed wing / rotary wing / missile)  •Update rate of at least 1KHz. | FAT |
| SR-13 | The simulator system shall provide the ability to model ionospheric and tropospheric delay. | Implementation of standard models (e.g. Klobuchar).  Implementation of constellation specific models (as defined in the SR-1 SiS ICDs). | As threshold plus:  Ability to modify the standard and constellation model parameters  Ability to enter user-defined custom models (user provided/defined). | FAT |
| SR-14 | The simulator system shall allow both the conditioning of its internal oscillator/clock from an external source and provide an output to condition downstream equipment from its internal source. | 10MHz (in and out)  1 Pulse Per Second (PPS) (in and out) | N/A | FAT |
| SR-15 | The simulator system shall accept both an external 'trigger' for simulation start and provide the ability to 'trigger' downstream equipment. | Falling / Rising edge trigger pulse.  1PPS Gated to scenario start. | N/A | FAT |
| SR-16 | The simulator system shall generate the full range of SiS ICD specified RF power levels as measured at all calibration points defined in SR-21 for all current GNSS constellations (SR-1). | All SiS ICD powers (including M-Code Regional Military Power levels) at all calibration points defined in SR-21. | As threshold plus:  Additional ±10dB dynamic range outside the SiS ICD power levels. | SAT |
| SR-17 | The simulator system shall automatically control power level 'in-run' to model real world GNSS constellation effects. | Satellite range  Satellite transmit antenna pattern.  Atmospheric losses  User defined platform body masking (receiver antenna pattern). | N/A | FAT |
| SR-18 | The simulator system shall allow the user to control the RF power levels. | Modification at the individual signal level (both predefined before simulation start and dynamic/live). | As threshold plus:  Ability to power control any combination of signals as multiple independent groups. | FAT and SAT |
| SR-19 | The simulator system shall operate without influence, interference or feedback while other RF generating sources are also being operated in the ACTF. | Maximum in-band power density at the simulator transmit antenna:  No degradation of performance during operation at 10W/m2.  No risk of damage at 100W/m2. | N/A | FAT |
| SR-20 | The simulator system shall provide the ability to modify the navigation message content on each signal individually. | At simulation start.  Fixed throughout. | As threshold plus:  Predefined changes 'in-run'  and  Dynamically during simulation. | FAT |
| SR-21 | The simulator system shall have a calibration capability. | Self-calibration routines for the simulator system:  RF power at chamber centre calibration.  Per broadcast -antenna manual calibration of the simulator system.  RF power calibration at the location of the equipment under test\*.  Signal phase/delay calibration to ensure the generation of a fully coherent position solution at the location of the equipment under test\*.  Any return to factory calibration requirement  \*Test is defined to be between 1m and 3m above chamber ground-level anywhere within the ground footprint of the chamber to allow testing of antennas installed on military platforms | As threshold, but fully automated calibration routines | FAT and SAT |
| SR-22 | The simulator system shall have removable drives to allow secure storage of all Software and data away from the main unit. | The contractor will provide 2 removable, fully operational copies of the system drives, with all necessary Software and licensing required to run the simulator system. This is required to allow different classifications of work to be completed via ‘hot swap’ system drives. | N/A | FAT |
| SR-23 | The simulator system shall be capable of being upgradable/modifiable for at least one additional future GNSS SiS change. | To be capable of responding to updates / changes to current GNSS SiS ICDs for:  •Constellations  •Signals  •Frequencies | As threshold plus:  Generation of all (as yet undefined) future GNSS Constellations, Signals and Frequencies | FAT |
| SR-24 | The simulator system shall be upgradable/modifiable to support a future augmentation for provision of simulated Inertial Measurement Unit (IMU) data, coherent with the simulated GNSS signals, via a live serial data stream. | Data stream and driving error model fully compatible with NATO STANAG 4572. | As threshold plus Additional test ports (for example but not limited to Litton and Honeywell) interface IMU data stream standards. | FAT |
| SR-25 | The simulator system shall operate from a single-phase AC, 50 Hz, 230V supply. | The simulator system shall operate from a single-phase AC, 50 Hz, 230V supply. | N/A | FAT |
| SR-26 | The simulator system shall operate within a minimum temperature range of 15°C to 35°C and a relative humidity range of 25% to 75%. | Conform within the environmental conditions for Category 2 TME as defined in Def Stan 66-31 Part 1 Issue 2. | N/A | FAT |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Training** |  |  |  |
| SS-1 | The Contractor shall deliver training at their premises or remotely to enable the operation of the simulator system by the Authority’s staff. | One month after the SAT Report on a date to be agreed with the Authority, training delivered as a one-off event for up to 5 people. | Training available Training delivered as a one-off event for up to 10 people. | (see Threshold) |
| SS-2 | The Contractor shall provide training material to enable the operation of the simulator system throughout its in-service life by the Authority. | 30 days after delivery of the training event at SS-1 Threshold provide training documentation pack such that internal MOD training can be provided by Authority personnel who attended Contractor training at SS-1 above. The training pack shall be delivered in Microsoft Office Word format. | N/A | (see Threshold) |
|  | **Support** |  |  |  |
| SS-3 | The Contractor shall deliver a support solution that provides a technical help line and repair facility that guarantees minimal simulator system downtime. | 24-hour response time for all support queries between the hours of 0800 to 1700 on working days.  Engineer Support on-site within 3 working days.  System is fully operational within 5 days | System is fully operational within 2 working days. | (see Threshold) |

**APPENDIX 2: List of Applicable Standards that the Contractor must adhere to**

|  |  |
| --- | --- |
| **Ser** | **Standard Title** |
| 1 | Def Stan 66-31, Pt 1, Issue 2 (Dec 2008), Basic Requirements & Tests for Electronic & Electrical Test & Measurement Equipment Part 1: Introduction and Guide to the Specification and Selection of Test and Measurement Equipment by the Procuring Authority |
| 2 | Def Stan 66-31, Pt 2, Issue 2 (Dec 2008), Basic Requirements & Tests for Electronic & Electrical Test & Measurement Equipment Part 2: Contractor General Requirements |
| 3 | Def Stan 00-51, Pt 1, Issue 1, Environmental Management Requirements for Defence Systems Part 1: Requirements |
| 4 | Def Stan 00-51, Pt 2, Issue 1, Environmental Management Requirements for Defence Systems Part 2: Guidance |
| 5 | Def Stan 00-056, Pt 1, Issue 7, Safety Management Requirements for Defence Systems Part 1: Requirements |
| 6 | Def Stan 00-056, Pt 2, Issue 5, Safety Management Requirements for Defence Systems Part 2: Guidance on Establishing a Means of Complying with Part 1. |
| 7 | Def Stan 00-600, Pt1, Issue3, Integrated Logistics Support requirements for MOD projects Part: 01: Integrated Logistics Support (ILS) Requirements |
| 8 | BS EN 61326-1 Electrical Equipment for Measurement, Control and Laboratory Use - EMC requirements Part 1: General Requirements |
| 9 | ISO 25051:2014 Software Engineering - Software Product Quality Requirements and Evaluation (SQuaRE) - Requirements for quality of COTS software product and instructions for testing. |
| 10 | NATO STANAG 4572 Open System Architecture Interface to Enable Simulator Laboratory Test Of Integrated Global Positioning System (GPS) Inertial Navigation Equipment |
| 11 | DEFSTAN 05-135 Avoidance of Counterfeit |
| 12 | DEFSTAN 05-061 Pt 4 Quality Assurance Procedural Requirements - Contractor Working Parties Issue 3 |

**APPENDIX 3:** **Illustrative diagram of ACTF**

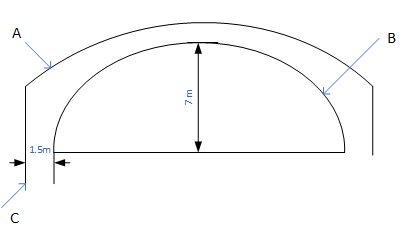


Figure 1 provides an indicative illustrative view of the 7 metre radius dome (B) housed within the Hardened Aircraft Shelter (A).

The key point to note is that access may be limited by the 1.5 metre (C) access walkway to the dome.

**Schedule 3 - Contract Data Sheet**

|  |
| --- |
| **General Conditions** |
| **Condition 2 – Duration of Contract:**          The Contract expiry date shall be: 2023/07/31 23:59:59 |
| **Condition 4 – Governing Law:**  Contract to be governed and construed in accordance with:  English Law  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:  N/A |
| **Condition 7 – Authority’s Representatives:**  The Authority’s Representatives for the Contract are as follows:  Commercial: Thomas Shields (as per Annex A to Schedule 3 (DEFFORM 111))  Project Manager: Maria Badel (as per Annex A to Schedule 3) (DEFFORM 111)) |
| **Condition 18 – Notices:**  Notices served under the Contract shall be sent to the following address:  Authority: MOD Abbey Wood, #1261, Spruce 2B, Bristol, BS34 8JH (as per Annex A to Schedule 3 (DEFFORM 111))  Contractor:  Notices can be sent by electronic mail? Yes |
| **Condition 19.a – Progress Meetings:**  The Contractor shall be required to attend the following meetings:  In accordance with 3.1 of Annex A to Schedule 2 Schedule of Requirements, Project Review Meetings to be held virtually via either Skype or MS Teams on a monthly basis until the FAT Report is delivered by the Contractor and accepted by the Authority and quarterly thereafter. |
| **Condition 19.b – Progress Reports:**  The Contractor is required to submit the following Reports:  As specified in 2.3, 2.5 2.6, 3.1 and 6.3 within Statement of Requirement at Annex A to Schedule 2 Schedule of Requirements.  Reports shall be Delivered to the following address:  [Maria.Badel100@mod.gov.uk](mailto:Maria.Badel100@mod.gov.uk) |
| **Supply of Contractor Deliverables** |
| **Condition 20 – Quality Assurance:**  Is a Deliverable Quality Plan required for this Contract? Yes  If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within 30 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.  Other Quality Assurance Requirements:  All applicable Quality Assurance conditions as listed out in Appendix 2 to Schedule 2 Schedule of Requirements. |
| **Condition 21 – Marking of Contractor Deliverables:**  Special Marking requirements: N/A |
| **Condition 23 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:**  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:  a) The Authority’s Representative (Commercial)  b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.uk  to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: |
| **Condition 24 – Timber and Wood-Derived Products:**  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)  to be Delivered by the following date: |
| **Condition 25 – Certificate of Conformity:**  Is a Certificate of Conformity required for this Contract? Yes  Applicable to Line Items: 1 and 4  If required, does the Contractor Deliverables require traceability throughout the supply chain?  No  Applicable to Line Items: N/A. |
| **Condition 27.b – Delivery by the Contractor:**  The following Line Items are to be Delivered by the Contractor:  Line item 1  Line Item 4 (if applicable during performance of the contract)  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)):  Line Items: N/A Address: N/A  Line Items: N/A Address: N/A  Consignee details (in accordance with condition 22):  Line Items: N/A Address: MOD Abbey Wood, #1261, Spruce 2B, Bristol, BS34 8JH  Line Items: N/A Address: N/A |
| **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 30 Business Days. |
| **Condition 31 – Self-to-Self Delivery:**  Self-to-Self Delivery required? No  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 Item 2 which shall be a maximum price | |
| **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 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: 701575421**

**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 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 Clause11.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: 701575421**

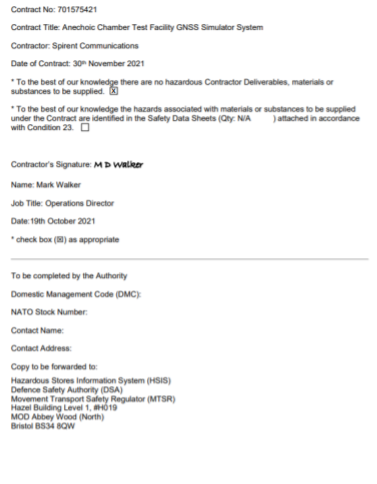
|  |
| --- |
| Contract No:   70157542 |
| Description of Contractor’s Commercially Sensitive Information:  Spirent supplied software source code included in hardware is Spirent copyrighted and  confidential material |
| Cross Reference(s) to location of sensitive information:  Software is installed on delivered hardware |
| Explanation of Sensitivity:  Software source code is proprietary, competitively sensitive information that was developed by  Spirent through private funding. |
| Details of potential harm resulting from disclosure:  Proprietary source code and method of product operation is sensitive competitive information,  and could result in significant commercial harm if disclosed. |
| Period of Confidence (if applicable): Indefinite (n/a) |
| Contact Details for Transparency / Freedom of Information matters:  Name: Sharon Baldwin  Position: Senior Manager, Business Operations  Address: Aspen Way, Paignton, Devon TQ4 7QR, UK  Telephone Number: +44 7717 896066  Email Address: Sharon.baldwin@spirent.com |

**Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract**

**Data Requirements for Contract No:  701575421**

**Hazardous Contractor Deliverables, Materials or Substances**

**Statement by the Contractor**



To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)

Defence Safety Authority (DSA)

Movement Transport Safety Regulator (MTSR)

Hazel Building Level 1, #H019

MOD Abbey Wood (North)

Bristol BS34 8QW

Emails to be sent to:

DESTECH-QSEPEnv-HSISMulti@mod.gov.uk

**Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract**

**Data Requirements for Contract No:  701575421**

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** |
| **N/A** | **N/A** | **N/A** | **N/A** | **N/A** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Schedule 8 - Acceptance Procedure (i.a.w. Condition 28)**

**Acceptance**

1. The procedure for Acceptance of the Contract Deliverables for ITEAP at Section 2.3, the FAT Report at Section 2.5 and SAT Report at Section 6.3 of the Statement of Requirement at Annex A shall be as follows:

i. The Contractor shall provide one soft (email) draft copy in either Microsoft Office, Adobe, or .pdf format, of the draft deliverable document to the Authority’s Project Manager.

ii. The Authority’s Project Manager will review the draft Deliverable document and provide to the Contractor a consolidated list of all comments within 10 working days. The Authority reserves the right to reject the documents in accordance with Condition 29.

iii. The Contractor shall then up-issue the document (to a final document) within 10 working days of agreement of all comments and provide one soft (email) copy in either Microsoft Office, Adobe, or .pdf format, to the Authority’s Project Manager. Provided the final document incorporates the agreed comments as defined in this Condition, the provision of the final soft copy to the Authority’s Project Manager shall constitute Acceptance of the Contract Deliverable.

iv. Any Payment made by the Authority shall be aligned to successful delivery of the Contract Deliverable specified in Table 1: Stage Payment Schedule of Condition 45.3 Stage Payments.

v. Both Parties shall endeavour to ensure that the above timescales are achieved but acknowledge that unforeseen circumstances may prevent them from being achieved. If a delay does occur that cannot be contained within the programme timescales both Parties will assess the situation and look to agree a way forward, the Authority’s decision will be final. No response from the Authority within this period shall not infer acceptance.

2. The procedure for Acceptance of the Contract Deliverables (Equipment) shall be as follows:

i. The Contractor shall conduct the Factory Acceptance Test at the Contractor’s site and shall invite the Authority to witness the Factory Acceptance Test in accordance with section 3.1 of the Statement of Requirement.

ii. The Contractor shall ensure that the time and location of the FAT is shared with the Authority at least 30 calendar days notice before the date the FAT is due to occur.

iii. Self-to-self delivery of the Simulator System shall occur upon acceptance of the SAT report in accordance with Schedule 8 Clause 1.

iv. The Factory Acceptance Test will not constitute as acceptance of the Contract Deliverables and is not related to payment of the Stage Payments at Table 1 Stage Payment Schedule of Condition 45.3.

v. Upon completion of the Factory Acceptance Test the FAT Report at Section 2.5 of the Statement of Requirements shall be delivered by the Contractor in accordance with Schedule 8 Clause 1.

vi. When the Authority is content with the FAT Report, self-to-self delivery of the system by the Contractor shall commence. Delivery of the equipment will not constitute as Acceptance of the Simulator System and the Title shall remain with the Contractor. Accepting FAT report does not constitute as acceptance of system

vii. The Contractor shall store the Simulator System upon Acceptance of the FAT report on his own premises until the Authority notifies the Contractor the installation of the Simulator System is required.

viii. Title of the Simulator System shall only pass from the Contractor to the Authority upon delivery of the SAT report and will only pass to the Authority on acceptance of the SAT report in accordance with Schedule 8 Clause 1.

**DEFFORM 111**

**DEFFORM 111**

**Appendix - Addresses and Other Information**

**1. Commercial Officer**

Name: Thomas Shields

Address: MOD Abbey Wood, #1261, Spruce 2B, Bristol, BS34 8JH

Email: Thomas.Shields101@mod.gov.uk        ( 07812 461417)

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

Name: Maria Badel

Address MOD Abbey Wood, #1045, Yew 0A, Bristol, BS34 8JH

Email: Maria.Badel100@mod.gov.uk                (07983 837466)

**3. Packaging Design Authority** Organisation & point of contact:

N/A

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

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

**Branch/Name:** N/A

**(b) U.I.N.** N/A

**5. Drawings/Specifications are available from** N/A

**6.** **Intentionally Blank**

**7.** **Quality Assurance Representative:** Alex Williams

**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](file:///C:\u07\appmprod\log\C:.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: N/A

**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](mailto: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](#https://www.gov.uk/government/organisations/ministry_of_defence/about/procurement)

**12. Forms and Documentation are available through \*:**

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

**Applications via fax or email:** [Leidos-FormsPublications@teamleidos.mod.uk](mailto: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.

**Deliverables**

**Deliverables Note**

This matrix is intended to provide an overview of the parties’ contractual obligations to assist with contract management. It does not form part of the contract and should not be relied upon to aid interpretation of the contract. In the event of any conflict, inconsistency or discrepancy between this matrix and the contract, the terms of the contract shall take precedence.

**Supplier Contractual Deliverables**

Supplier Contractual Deliverables

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Description | Due | Responsible Party |
| Obligation Condition 36.c - Payment | no later than 30 days from receipt of valid undisputed invoice |  | Supplier Organization |
| Obligation Condition 37.c - Notification of applicable VAT | Notification of VAT liability or changes to it |  | Supplier Organization |
| Obligation Condition 5.b - Notice of inconsistancy between contract documents | If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith |  | Supplier Organization |
| Obligation Condition 16.a - Change of Control of Contractor | Written Notification of any intended, planned or actual change in control of the Contractor, including any Sub-contractors. |  | Supplier Organization |
| Obligation Condition 16.b - Notification of Concern due to Change of Control | advise the Contractor in writing of any concerns due to Change of Control |  | Supplier Organization |
| Obligation Condition 23.e, 24.a, and 24.c - Safety Data Sheet | provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverable containing such. |  | Supplier Organization |
| Obligation Condition 23.f.(6) And Condition 23.g.(1).(b) - Documents relating to design of new MLP Packaging | "All SPIS, new or modified, shall be uploaded by the on to SPIN. where the Supplier is the PDA and registered a list of all SPIS which have been prepared or revised against the Contract; and a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings shall be provided for upload" |  | Supplier Organization |
| Obligation Condition - Compliance with hazard reporintg requirements for materials or substances are ordnance, munitions or explosives | in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems. |  | Supplier Organization |
| Obligation Condition 25.c - Source of Timber and Wood | If requested Evidence that the Timber and Wood-Derived Products supplied to the Authority comply with the requirements of clause 25.a or 25.b or both. |  | Supplier Organization |
| Obligation Condition 26.a - Certificate of Conformity | Provide a Certificate of Conformity and any applicable Quality Plan |  | Supplier Organization |
| Obligation Condition 42.c.(2) - Post notification of Termination | List of Unused and undamaged materiel; contractor deliverables in the course of manufacture. |  | Supplier Organization |
| Obligation Condition 1.c.(2) - Notifucation of litigation | Notification of; Litigation, arbitration, administrative, adjudication or mediation proceedings against itself or a Subcontractor |  | Supplier Organization |
| Obligation Condition 1.c.(4) - Notification of Winding-up | Notice of any proceedings or steps taken for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, |  | Supplier Organization |

**Buyer Contractual Deliverables**

Buyer Contractual Deliverables

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Description | Due | Responsible Party |
| Obligation Condition 33.a 33.i - Import Export Licence Information | sufficient information, certification, documentation and other reasonable assistance to obtain necessary UK import/export licence or to facilitate the granting of export/import licences or authorisations by a foreign Government |  | Buyer Organization |
| Obligation Condition 36.a - Register on CP&F | provide details for registration on CP&F |  | Buyer Organization |
| Obligation Condition 8.c - Change in Authority Representatives | Written confirmation of any change to the Authorities Representatives |  | Buyer Organization |
| Obligation Condition 14.f.(6) - Use of confidentiality agreement | Disclosure of Information on a confidential basis shall be subject to a confidentiality agreement containing terms no less stringent than those placed on the Authority |  | Buyer Organization |
| Obligation Condition 42.a - Termination | Written notice of Termination of part or whole of contract |  | Buyer Organization |
| Obligation Condition 5.b - Notice of inconsistancy between contract documents | If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith |  | Buyer Organization |

**Quality Assurance Conditions**

[contained at Statement of Requirement Annex A to Schedule 2]

**Earned Value Management**

[Not used]

**Pricing**

[see Schedule 2 Schedule of Requirements and clause 46.1)

**Key Performance Indicators**

[see Condition 45.6]