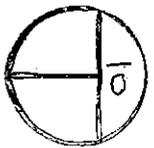




trusted to deliver™

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DEFFORM 47
(Edn 03/15)

COMPANY ADDRESS

Our Reference:
LSBU7/0200

Date: 25th June 2015

Dear Sirs,

Invitation To Tender (ITT) Reference No. LSBU7/0200

1. You are invited to tender for The Repair of Fire Suppression Systems as Fitted to Various Vehicle Platforms and Supply of Associated Spares competition in accordance with the attached documentation.
2. The requirement is for The Repair of Fire Suppression Systems as Fitted to Various Vehicle Platforms and Supply of Associated Spares.
3. Funding has been approved on 8th December 2014.
4. The anticipated date for the contract award decision is 24th August 2015, please note that this is an indicative date and may change.
5. You must submit your Tender to arrive no later than 2pm on Wednesday 29th July 2015. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of your Tender when you submit it to the Authority

Yours faithfully

SIGNED COPY SCANNED AND EMAILED

Paula Draycott

Head of Commercial and Customer Management
Babcock DSG Ltd
(Babcock DSG Ltd acting as the Authority's agent)

List of Suppliers Invited to Submit a Tender for ITT No. LSBU7/0200

Supplier Name	Supplier Address and Phone No	Supplier Point of Contact
MEL Aviation Ltd	Laurence Walker House Addison Road Sudbury Suffolk CO10 2YW 01787 373282	Mr Stuart Hawkins
AEM Ltd	Taylor's End Road Stansted Airport Essex CM24 1RB 01279 682311	Mr Sandy Basu
Lifeline Fire & Safety Systems Ltd	Falkland Close Coventry West Midlands CV4 8AU 02476 712999	Mr Daniel Comber
Force Protection Europe Ltd	Premier House Hortonwood 7 Telford Shropshire TF1 7GP 01952 602655	Mr Paul Rule



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**Invitation to Tender
For
LSBU7/0200
The Repair of Fire Suppression Systems as Fitted to
Various Vehicle Platforms and Supply of Associated
Spares.**

Contents

This invitation consists of the following documentation:

- DEFFORM 47 – Invitation To Tender. The DEFFORM 47 sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
 - Section A – Introduction Page 5
 - Definitions
 - Purpose
 - ITT Documentation and ITT Material
 - Tender Expenses
 - Material Change of Control from Supplier Selection
 - Contract Conditions
 - Consultation with Credit Reference Agencies
 - Other Information
 - Section B – Key Activities Page 7
 - Section C – Instructions on Preparing Tenders Page 8
 - Tenders for Selected Contractor Deliverables
 - Construction of Tenders
 - Validity
 - Variant Bids
 - Section D – Tender Evaluation Page 10
 - Section E – Instructions on Submitting Tenders Page 15
 - Submission of your Tender
 - Section F – Conditions of Tendering Page 16
 - Conforming to the Law
 - Bid Rigging and Other Illegal Practices
 - Conflicts of Interest
 - Government Furnished Assets
 - Standstill Period
 - Publicity Announcement
 - Sensitive Information
 - Remedies for Breach of Contract
 - Reportable Requirements
 - Conditions of Tendering Specific to this Requirement
 - DEFFORM 47 Annex A – Tender Submission Document (Offer) Page A1
 - Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations
 - DEFFORM 47 Annex B – Commercial Compliance Matrix
- Schedule of Requirements - Contract Conditions -Schedule 2 Page 51
- Statement of Requirement – Contract Conditions –Schedule 5 Page 71
- Contract Conditions
- DEFFORM 111 – Contract Conditions Annex A + Schedule 3 Page 67
- Tenderer's Commercially Sensitive Information (DEFFORM 539A) Sched 6 Page 72
- DEFFORM 28 – Tender Return Label (attached)

Section A – Introduction

Definitions

- A1. This requirement is issued on behalf of the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"). In this Agreement, the Authority is acting as part of the Crown and Babcock DSG Ltd will be conducting Procurement and Contract Management activity as the Authority's Agent.
- A2. "You / Tenderer" means the economic operator or group of operators in the form of a consortium, including sub-contractors, which has been invited to submit a response to this Invitation to Tender.
- A3. "Invitation to Tender" (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response, competitive dialogue or negotiation.
- A4. A "Tender" is the offer that you are making to the Authority.
- A5. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificates) of Conformity supplied in accordance with any Quality Assurance (QA) requirements if specified) which the contractor is required to provide under the contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.
- A6. "Schedule of Requirements Schedule 2 in Standardised Contracting Template 3 (SC3) means that part of the contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.
- A7. The "Statement of Requirement" Schedule 5 details the technical requirements and acceptance of the Contractor Deliverables. The Statement of Requirement is attached at Annex C to this DEFFORM 47. This may include the System Requirements Document (SRD).
- A8. "Conditions of Tendering" means the conditions set out in the DEFFORM 47 that govern the competition.
- A9. "Contract Conditions" means the attached conditions that will govern any resultant contract.
- A10. A "Third Party" is any person who is not an employee of the Tenderer as defined at A2.
- Purpose**
- A11. The purpose of this ITT is to invite you to propose a solution / best price to our requirement. This documentation explains and sets out the:
- tender process and timetable for the next stages of the procurement;
 - instructions and conditions that govern this competition;
 - information you must include in your Tender and the required format;
 - administrative arrangements for the receipt and evaluation of Tenders; and
 - Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.
- A12. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.
- A13. This ITT has been issued to all potential Tenderers chosen during the supplier selection stage, listed on page 2 of this DEFFORM 47.
- A14. The requirement was advertised by the Authority in the Defence Contracts Online dated 6th February 2015 with reference to the requirement for The Repair of Fire Suppression Systems as fitted to Various Vehicle Platforms and Supply of Associated Spare following the Restricted Procedure under the Defence and Security Public Contracts Regulations 2011.

ITT Documentation and ITT Material

A15. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Material means any other material (including patterns and samples), equipment or software issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Documentation, ITT Material and any intellectual property rights (IPR) in them shall remain the property of the Authority or other Third Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
 - b. not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
 - c. seek approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
 - d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A15.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
 - e. accept that any further disclosure of ITT Documentation, or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;
 - f. immediately destroy all ITT documentation, ITT Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
 - g. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.
- A16. Some or all of the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A15 above.

Tender Expenses

A17. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

Material Change of Control from Supplier Selection

A18. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any sub-contractors at any time during the procurement process. This may affect your right to stay in the competition.

Contract Conditions

A19. Contract conditions are attached. These conditions are non-negotiable. The full text of Defence Conditions (DEFCONS) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/acquisition-operating-framework>.

Section B – Key Activities

The key dates for this procurement are currently anticipated to be as follows:

Final date for Clarification Questions / Requests for additional information	15 th July 2015	Tenderers	Mr Niki Nye
Final Date for Requests for Extension ²	13 th July 2015	Tenderers	Mr Niki Nye
The Authority issues Answers and Clarifications	17 th July 2015	The Authority	All Tenderers
Tender Return	2pm 29th July 2015	Tenderers	The Tender Board, using tender label

Notes

1. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.
2. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other bidders. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date.

Section C - Instructions on Preparing Tenders

Tenders for Selected Contractor Deliverables

C1. You must Tender for all the Contractor Deliverables listed against each Lot(s) you are Tendering for as detailed in the attached Schedule of Requirements. The Authority reserves the right to reject your Tender where you have not tendered for all of the Contractor Deliverables in the chosen Lot(s).

Information for LOT 2 only:

C1.(a) Appendix B to Schedule 2 – Schedule of Requirements – Firm pricing offer for each line item to remain valid for the duration of the Contract, making special note of the following:

- The Tenderer shall offer appropriate price breaks (up to a maximum of 6) that take account of the Evaluation Quantity identified at column J;
- In conjunction with the price breaks offered, the Tenderer shall confirm, at column K, the Evaluation Price, which shall be the price applicable to the Evaluation Quantity at column J. Where the Evaluation Price does not match the price breaks offered, the Authority reserves the right to consider the offer for that line item as non-compliant;
- In providing price breaks for each line item, Tenderers shall ensure that the prices represent a consistent offer across the range of quantity bands where each price is commensurate with the quantity band it relates to and the other prices offered for higher and lower quantity bands;
- Where the Authority reasonably considers that an offer for a particular line item has been skewed to supply an artificially low price for the Evaluation Quantity then the Authority reserves the right to consider the offer for that line item as non-compliant

Appendix B to Schedule 2 – Schedule of Requirements – Lead time for each line item, at column X, to be provided in business days

Construction of Tenders

- C2. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP. Prices must be Firm Price and detail any price breakdowns which must be included in the Tender.
- C3. To assist the Authority's evaluation please set out your Tender response in accordance with Section D (Tender Evaluation).

Validity

C4. In accordance with F3 your Tender must be valid / open for acceptance for 90 calendar days from the Tender return date. If successful, your Tender must be open for acceptance for a further thirty (30) calendar days.

Variant Bids

C5. You may only submit a variant bid where the Contract Notice states that variant bids will be considered (or where the requirement is exempt from the EU Regulations). A variant bid is a Tender that offers an alternative approach to, or method of, meeting the Authority's requirements as set out in the ITT Documentation. The Authority will give full and careful consideration to any permitted variant bids received. Any variant bid should, as far as possible, meet the attached Conditions of Tendering and Contract Conditions.

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C6. Where variant bids are permitted, and you submit a variant bid, you are required to submit two bidders, one against the Statement of Requirement and one variant bid. The standard Tender must meet the minimum tender evaluation criteria as set out in Section D (Tender Evaluation), and must be submitted in accordance with the Conditions of Tendering. Variant bids will be evaluated in accordance with the tender evaluation criteria as set out in Section D (Tender Evaluation) and must be submitted in accordance with the Conditions of Tendering.

C7. Any Tender made subject to additional or alternative Contract Conditions alone is not a variant bid. Where the tender evaluation has a pass / fail for the Contract Conditions the Authority may reject the Tender on the grounds of such additional or alternative Contract Conditions.

Section D – Tender Evaluation

This section details how your Tender for each Lot will be evaluated, the tools used to evaluate the Tender and the evaluation criteria.

LOT 1 – REPAIR OF FIRE SUPPRESSION SYSTEMS

The Tender Evaluation will be based on: Most Economically Advantageous Tender (MEAT)

This is a comparative score and the scoring method is worked out using the ratio Technical 50% and Price 50% calculation. The optimum is the highest technical score and lowest price, this together would get the highest total score. If you had the highest technical score but your price was double than that of the lowest priced compliant Tender, this would receive a lower total score.

To give a total score the following calculation shall be used: **Technical 50% (530 Marks)**
Price 50%

Mandatory Criteria: Commercial		
Compliance	Pass / Fail	
Returns completed in DEFFORM 47 Annex A (Offer)	Pass / Fail	
Commercial Compliance Matrix – in DEFFORM 47 Annex B	Pass / Fail	
Failure to meet the Mandatory Criteria will result in your Tender being non-compliant.		
Each individual criterion will have scoring mechanisms and weightings as follows:		
Confidence Rating	Score	
High Confidence	100%	
Good Confidence	70%	
Low Confidence	30%	
Concerns	0%	
1. TECHNICAL		
{1.1} Configuration Control/Testing		
Demonstrate how the configuration of Articles will be maintained to the correct build standard following repair, and provide details of how the Articles will be tested both during and following repair.		
Total marks available for this question 125		
Weighting 25%		
0	Concerns	The Potential Provider has failed to provide suitable evidence to show how the configuration of Articles will be maintained, and repaired to the correct build standard.

		The Potential Provider has failed to demonstrate how all Articles will be tested to ensure they meet required output standards.
30	Low Confidence	The Potential Provider has outlined a process for the repair activity, but are unable to demonstrate a process for all required items or suitable sub-contractors. The Potential Provider has failed to demonstrate how all Articles will be tested to ensure they meet required output standards.
70	Good Confidence	The Potential Provider has explained the process to ensure that Articles are repaired to the correct build standard and configuration, and that they are able to sub-contract to suitable organisations for the repair of other items where this process is not directly available to them. The Potential Provider has demonstrated a robust process to show how the various Articles will be tested to ensure they meet required output standards.
125	High Confidence	The Potential Provider has provided detailed evidence and fully explained their processes to ensure that Articles are repaired to the correct build standard and configuration. The Potential Provider has provided full details and supporting evidence to show how the various Articles will be tested to ensure they meet required output standards.
<p>{1.2} Capability/Capacity/Surge/Urgency Describe in detail the capability and capacity of your proposed repair solution for the Articles under this requirement. Also describe what procedures are in place to support urgent requirements (i.e. improved turnaround time for set number of Articles) and surge requirements (i.e. ability to cope with an uplift in the workload over a period of time).</p>		
<p>Total marks available for this question 125</p>		
<p>Weighting 25%</p>		
0	Concerns	The Potential Provider fails to demonstrate suitable capability or capacity to fulfil the requirement of the repair activity, either with in house or sub-contracted capability. The Potential Provider fails to demonstrate how urgent and/or surge requirements would be met.
30	Low Confidence	The Potential Provider is able to demonstrate either suitable capability or capacity but not both requirements. For those items they intend to sub-contract, bidder has suggested a route but has failed to provide suitable evidence to show that this route has the required capacity to fulfil the potential requirements of the repair activity. The Potential Provider fails to demonstrate how urgent and/or surge requirements would be met.
75	Good Confidence	The Potential Provider suitably demonstrates that they and/or their sub-contractor have the necessary capability and capacity to fulfil the requirements of the repair activity. The Potential Provider demonstrates that the company and/or the sub-contractor have a flexible approach that will allow urgent requirements to be

		dealt with in a timely manner, and an ability to cope with surge.
125	High Confidence	The Potential Provider fully demonstrates, with supporting evidence, that they have the necessary capability to fulfil the requirements of this ITT, and can show that their organisation and/or the sub-contractor has the capacity to meet the requirement specified. The Potential Provider fully demonstrates that the Company have a flexible approach that will allow urgent requirements to be prioritised both in manpower and access to necessary spares. The Potential Provider also demonstrates the plans and methods in place to ensure that they would be able to accommodate a surge in requirement if required.
{1.3} Compliance With Turn-Round-Times		
Please demonstrate what procedures are in place to ensure your turn-round-times are achieved.		
Total marks available for this question 105		
Weighting 20%		
0	Concerns	The Potential Provider has stated that they are unable to provide any commitment to turn-round times due to issues out of their control.
31.5	Low Confidence	The Potential Provider has failed to clearly demonstrate the measures they will take to ensure their expected turn-round times are achieved.
73.5	Good Confidence	The Potential Provider has outlined the measures they will take to ensure their expected turn-round times are achieved.
105	High Confidence	The Potential Provider has clearly demonstrated detailed measures to ensure their turn-round times are achieved. Providing examples of previous occasions where they have applied these measures to ensure delivery against the turn-round time.
{1.4} Training		
Please describe briefly the process you employ in training and developing staff in order to keep up to date with technological advances and improve effectiveness in the workplace.		
Total marks available for this question 70		
Weighting 10%		
0	Concerns	The Potential Provider has not provided any statement in respect of their processes regarding training and developing staff.
21	Low Confidence	The Potential Provider has demonstrated their policy for training and developing their staff, but does not provide examples of training undertaken by staff in the organisation.
49	Good Confidence	The Potential Provider has demonstrated their policy for training and developing their staff, providing examples of training undertaken by staff in general in their organisation.
70	High Confidence	The Potential Provider has demonstrated their policy for training and developing their staff, providing examples of training undertaken by staff directly employed in the repair of the Articles, and quantifying the improvement seen within the company from undertaking continued professional development of its staff.

(1.5) Obsolescence Management
 ase describe what arrangements are in place for dealing with obsolescence issues and spares sourcing. Demonstrate how/where you would source the material necessary to undertake this requirement.

Total marks available for this question 105

Weighting 20%

0	Concerns	The Potential Provider has failed to demonstrate an effective process for managing obsolescence. The Potential Provider has failed to provide information regarding how/where they would source the material necessary for this requirement
31.5	Low Confidence	Arrangements for managing obsolescence and spares sourcing are not covered in sufficient detail. The Potential Provider has provided limited information regarding how/where they would source the material necessary for this requirement...
73.5	Good Confidence	The Potential Provider has provided details of formal arrangements currently in place for dealing with obsolescence issues and spares sourcing. The Potential Provider has provided process information regarding how/where they would source the material necessary for this requirement
105	High Confidence	The Potential Provider has demonstrated a robust and proactive processes for dealing with obsolescence issues and spares sourcing. The Potential Provider has provided detailed information regarding how/where they would source the material necessary for this requirement, and provided supporting evidence, such as a Supply Chain Network Map.

DSG reserves the right to exclude any bidder who scores a concern on any question

Pricing

The pricing element of this tender will be scored using the pricing supplied from the four potential providers.

Total Available Marks for Pricing 50%

Pricing Score = Total Available Marks x

[**Lowest Priced Technically and Commercially Compliant Tender Suppliers Tender Price**]

Below is an example calculation:-

[**Lowest Priced Technically and Commercially Compliant Tender Suppliers Tender Price (£1,189,621)**]

$$= 50 \times$$

$$= 50 \times 0.877$$

$$= 43.84 \text{ (43.8 rounded to one decimal place)}$$

Following the technical evaluation, the score will be added to the score achieved for price to provide a total overall score for each bid and the Contract will be awarded to the tenderer with the highest score.

In the event that the same score is achieved by more than one bidder the Contract will be awarded to the tender with the lowest price providing it meets the minimum technical score.

The Authority reserves the right to consider any bid with a technical score of 14 or less to be technically non-compliant

For the purposes of this Tender Items 1 & 2 - Only the price for the remanufacture repair incl delivery and packaging will be evaluated.

LOT 2 – THE SUPPLY OF ASSOCIATED FIRE SUPPRESSION SPARES

Tender Evaluation Criteria

It is the Authority's intention is to award the Contract to the Tenderer offering the lowest cost proposal in terms of both price and lead-time.

The total cost of each bid shall be defined as the total cost of supplying the Evaluation Quantities, stated on Appendix B to Schedule 2 – Schedule of Requirements, plus the associated Lead Time Quantity.

The Evaluation Quantity is an indication of the Authority's anticipated requirements over the two year period and is provided for evaluation purposes only and on a strictly without commitment basis.

The Lead Time Quantity is defined as the additional quantity required to meet the demand during the period between order placement and completion of delivery, and is calculated as follows:

[Forecast of Quarterly Demand (FQD) x Lead Time (in months)] / 3 (rounded up to the nearest whole number).

For the purposes of this evaluation, the FQD to be used for each line item is included at column F in the Appendix B to Schedule 2 – Schedule of Requirements.

The total Lead Time Quantity shall be added to the Evaluation Quantity of each line item and multiplied by the Evaluation Price offered on the Appendix B to Schedule 2 – Schedule of Requirements to determine the total cost of each Tenderer's bid.

The Authority does not wish to receive a Minimum Order Quantity (MOQ) against any line item. If, by exception, the Tenderer deems it necessary to impose an MOQ then he must provide adequate justification with his bid. Should a quoted MOQ exceed the sum of the Evaluation Quantity and Lead Time Quantity then the MOQ shall be used in its place to calculate the total cost.

Section E – Instructions on Submitting Tenders

Submission of your Tender

- E1. Tenders must be sent to the Tender Board by the date and time stated in the covering letter to this DEFFORM 47. You must provide 1 unpriced and 1 priced copies and 1 CD of your Tender. You must not email electronic copies until after the Tender Board has taken place. If you email your Tender before the Tender Board date, your Tender may be excluded from the competition.
- E2. You must upload electronic copies of your Tender to miki.nye@dsst.mod.uk after 2pm on 29th July 2015.
- E3. You must complete and include DEFFORM 47 Annex A (Offer) (excluding Appendix 1) with your Tender. Where you select 'Yes' to any questions you must attach the relevant information.
- E4. You must include the original signed DEFFORM 47 Annex A (Offer) with one paper copy of your priced Tender.
- E5. You must submit your paper and CD copies in a sealed envelope or box. For health and safety reasons, no individual envelope or box should weigh more than 11 kilos.
- E6. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope or box that contains your Tender.
- E7. If you intend to hand deliver your Tender you must inform the named Commercial Officer of your intention and seek further delivery instructions. Failure to do so may result in your Tender being refused and / or returned.
- E8. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.
- E9. You must submit responses to each of the tender evaluation questions in section D.
- E10. You must submit a completed Commercial Compliance Matrix (Annex B to this Deform 47) to demonstrate your unqualified acceptance of the Terms and Conditions of the Contract.
- E11. You must submit a Tenderers Commercially Sensitive Information form (Deform 539a) at schedule 6 to the Contract.
- E12. You must submit a draft quality plan in accordance with DEFCON 602A and AQAP2105 Edn 2 (to be assessed in accordance with the evaluation matrix at Schedule 16 to the contract). Failure to provide a compliant document may exclude your company from further participation.
- E13. Your acceptance to provide the repair specifications in accordance with Schedule 2 (Schedule of Requirements) and Deform 315 (Schedule 17).
- E14. *To ensure that Purchase orders are sent to the correct location please can you identify a single mailbox location where all orders can be sent from Babcock DSG Ltd with your tender submission.*

Section F – Conditions of Tendering

- F1. The issue of ITT Documentation is not a commitment by the Authority to place a contract as a result of this competition or at a later stage. Any expenditure, work or effort undertaken prior to an offer of contract and acceptance of that, is a matter solely for your commercial judgement. The Authority reserves the right to:
- a. seek clarification or additional documents in respect of a Tenderer's submission;
 - b. disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT;
 - c. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic Pre-Qualification Questionnaire (PQQ) or the tender process;
 - d. re-assess your suitability to remain in the competition, for example where there is a material change of control from supplier selection;
 - e. withdraw this ITT at any time, or to re-invite Tenders on the same or any alternative basis;
 - f. choose not to award any contract as a result of the current procurement process;
 - g. award a contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities; and / or
 - h. ask for a price breakdown where the Tender price is low.
- F2. The contract will be entered into when the Authority sends written notification of its entry into the contract. Written notification will be issued, to the address you provide, on or before the expiration of the period specified in paragraph C4 and subject to paragraph F3.
- F3. It is a Condition of Tendering that the winning Tenderer holds their Tender open for acceptance for the period stated in C4. This period starts on the day the Authority announces its decision to award the contract to the winning Tenderer in accordance with the Tender. In the event that legal proceedings challenging the award of the contract are instituted, prior to entry into contract, it is a condition of this ITT that you hold your Tender open for acceptance during this period, and up to fourteen (14) days after the result of the legal proceedings. In the event of such legal challenge, the Authority agrees to use all reasonable measures to accelerate proceedings.

Conforming to the Law

- F4. You must comply with the UK Competition Act 1998, the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.
- F5. Your attention is drawn in particular to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation then your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

Bid Rigging and Other Illegal Practices

- F6. You must report any bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tendering exercise to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

Conflicts of Interest

- F7. You must notify the Authority immediately of any Conflicts of Interest (COI) that have arisen or that arise at any point prior to contract award decision.
- F8. Where there is an existing or potential Conflict of Interest (COI) you must include a proposed Compliance Regime in your Tender. As a minimum this must include:
- a. manner of operation and management;
 - b. roles and responsibilities;
 - c. standards for integrity and fair dealing;
 - d. levels of access to and protection of competitors sensitive information and Government Furnished Information;
 - e. confidentiality / non-disclosure agreements (e.g. DEFFORM 702);
 - f. the Authority's rights of audit; and
 - g. physical and managerial separation.
- Should your Tender be accepted your proposed Compliance Regime will become part of the Contract Conditions and shall be legally binding.

Government Furnished Assets

F9. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-99. If unsuccessful in this competition, you must seek disposal instructions for that GFA from the named Commercial Officer.

Standstill Period

F10. The Authority is obliged under certain circumstances to allow a space of ten (10) calendar days between the date of dispatch of its notice to Tenderers before entering into a contract, known as the standstill period. This period is to give unsuccessful Tenderers an opportunity to make a legal challenge before the contract is entered into if there has been, or it is alleged that there has been, a breach of the Regulations. The standstill period ends at midnight at the end of the 10th day after the date the DEFFORM 158 is sent. Where this is not a working day, it extends to midnight of the next working day.

Publicity Announcement

F11. The Authority will publish notification of the contract and may publish contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition between suppliers. You should complete and return DEFFORM 539A as explained in the DEFFORM 47 Annex A and associated Appendix 1.

F12. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.

F13. Under no circumstances should you confirm to any Third Party the Authority's acceptance of an offer of contract prior to either informing the Authority of your acceptance or the Authority's announcement of the award of contract, whichever occurs first.

Sensitive Information

F14. All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice.

F15. For these purposes, the Authority may share within Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and / or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. Contractors taking part in this competition must identify any sensitive material in the DEFFORM 539A and consent to these terms as part of the competition process. This allows the MOD to share information with other Government departments while complying with our obligations to maintain confidentiality.

Remedies for Breach of Contract

F16. If using Standardised Contracting conditions, you should be aware of the contractual remedies set out in the Contract Conditions clause F.1.a of SC3 which may apply in the event of a breach of contract by the contractor. Damages for breach of contract are not limited under the contract. However, you should also note under clause F1.d that in exercising its rights and remedies under the contract the Authority must act in a reasonable and proportionate manner having regard to the nature and consequences of the breach of contract. If you are unsure about the potential liability under the contract, you should seek advice from the named Commercial Officer.

Reportable Requirements

F17. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.

This is not a test of your answer but failure to complete this part of the Annex makes your Tender non-compliant.

Conditions of Tendering Specific to this Requirement

F18. Options

The Authority requires option prices for:

Option Year 1 – 1st August 2016 – 31st July 2017 (Estimated dates)
Option Year 2 – 1st August 2017 – 31st July 2018 (Estimated dates)

You must provide prices against the options. The option prices must be firm.

If your Tender is successful you will be expected to provide that option requirement in contract condition Schedule 3 Condition A24. The Authority will not waive any rights under the said contract condition.

F19. Sustainable Procurement

Sustainable Development

The Authority is very committed to achieving sustainable development goals through educating the supply chain, developing performance measures and sharing best practice. This is not a condition to working with the Authority now or in the future, nor part of the contract. It is however a commitment on our part to encourage and support sustainable development and we are committed to working with you to this end. The Authority very much hopes that you share this commitment and we will discuss sustainable development further with the successful Tenderer during the performance of any resultant contract.

Joint Statement on Access to Skills, Trade Unions and Advice in Government Contracting

The Government is committed to improving the quality of services delivered under our contracts and improving the skills of those working on these. This is an ideal shared by the Confederation of British Industry and Trade Union Conference and the Authority encourages all Tenderers to demonstrate their commitment to improving the skills of their workforce. This can be done by signing up to the Sustainable Workforce Pledge. This is not a condition of working with the

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Authority now or in the future, nor part of the contract. It is however a commitment on your part to actively encourage and support your staff to gain skills and we are committed to working with you to this end. The Authority very much hopes you will want to show your commitment in this way and we will discuss skills improvement further with the successful Tenderer during the performance of any resultant contract.

Further information about apprenticeships including a full list of available frameworks can be found at: www.apprenticeships.org.uk
Further information on the Sustainable Workforce Pledge is available via the ProSkills website: <http://proskills2.users35.intrdns.co.uk/skillspledge>

In respect of any goods, services or works likely to be required for the performance of any resultant contract, the Tenderer shall provide the Authority with the following information:

- A full list of material content used in the [product, service or works], that is not covered by specific reporting requirements in the ITT Documentation;
- Specify whether, and provide evidence that, recycled, reusable or biodegradable products have been considered for performance of the resultant contract and suggest ways that such products could be used;
- Explain the potential for and risk of pollution (land, air and water) from performance of the resultant contract and demonstrate how the Tenderer intends to manage this risk;
- Verify that all waste products used in the performance of the resultant contract will be dealt with in sustainable way and in accordance with applicable environmental legislation;
- Specify an estimate of the energy [specify relevant units] for [manufacture of the product, or delivery of the service or works] and suggest ways that energy efficiency can be improved;
- Demonstrate that the performance of the resultant contract will not have an adverse impact on employee welfare or health and safety.

Tender Ref No. LSBU7/0200

Ministry of Defence

Tender Submission Document (Offer)

DEFFORM 47 Annex A
Edn 12/14

To the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter called "the Authority")

The undersigned Tenderer, having read the ITT Documentation, offers to supply the Contractor Deliverables at the stated price(s), in accordance with any referenced drawings and / or specifications, subject to the Conditions of Tendering. It is agreed that only the Contract Conditions or any amendments issued by the Authority shall apply.

Applicable Law		Yes / No*	
I agree that any contract resulting from this competition shall be subject to English Law			
*Where 'No' is selected, Scots Law will apply.			
Total Value of Tender (excluding VAT)			
£			
WORDS			
UK Value Added Tax			
If registered for Value Added Tax purposes, please insert:			
a. Registration No			
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £			
Location of work (town / city) where contract will be performed by Prime:			
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)			
Tier 1 Sub-contractor Company Name	Town / city to be Performed	Contractor Deliverables	Estimated Value Yes / No
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			Tenderer's Declaration
Is the offer subject to the Authority contracting for all the Contractor Deliverables?			Yes* / No
Is the offer made subject to a Minimum Order Quantity?			Yes* / No
Are the Contractor Deliverables subject to Registered Designs or Patents?			Yes* / No
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions?			Yes* / No
Are the Contractor Deliverables subject to Overseas Expenditure?			Yes* / No
Have you complied with all regulations relating to the operation of the collection of custom / import duties?			Yes / No
Have you completed Form 1686 for sub-contracts?			Yes / No
Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?			Yes / No
Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)?			Yes / No

If you have not already signed a corporate level DEFFORM 30 have you attached one? (Please choose Not Required if your Company is NOT P2P enabled)	Yes / No/Not Required
Have circumstances changed since Supplier Selection Stage? If so have you attached a revised Statement Relating to Good Standing?	Yes* / No
Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No
Do the Contractor Deliverables contain hazardous items, materials or substances?	Yes* / No
Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000? http://ozone.unep.org/new_site/en/monteal_protocol.php	Yes* / No
Are you able to support the objectives of Reservist and other supplier support to the Armed Forces?	Yes* / No
Have you attached The Bank / Parent Company Guarantee?	Yes* / No / Not Required
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?	Yes / No / Not Required
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	

Tenderer's Declaration of Compliance with Competition Law

We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:

- a. the offered price has not been divulged to any Third Party,
- b. no arrangement has been made with any Third Party that they should refrain from tendering,
- c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion,
- d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and
- e. no arrangement has been made with any Third Party otherwise to limit genuine competition.

We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.

We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.

We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.

Dated this..... day of Year

Signature: In the capacity of

(Must be original) (State official position e.g. Director, Manager, Secretary etc.)

Name: (in BLOCK CAPITALS)	Postal Address:
duly authorised to sign this Tender for and on behalf of:	Telephone No:
(Tenderer's Name)	Registered Company Number:

Babcock DSG acting as the Authority's agent.

Information on Mandatory Declarations

Part Tender

1. Under Condition of Tendering F1, the Authority reserves the right to order some or part of your Tender. If your offer is subject to the Authority contracting for all the Contractor Deliverables select 'Yes' and provide further details in your Tender.

Minimum Order Quantities

2. Where your offer is subject to minimum order quantities select 'Yes' and provide further details in your Tender.

Notification of Inventions etc.

3. Where the Contractor Deliverables are subject to any Registered Intellectual Property Rights select 'Yes'.
4. You must clearly state in your Tender any Contractor Deliverable to be produced under any resultant contract that is, or is likely to be, the subject of a Patent, a Registered Design right or an application for either, or an unregistered design right, owned by either yourself or a Third Party. This includes anything of this nature affecting the performance of any resultant contract or subsequent use of any Contractor Deliverable by the Authority. You must specifically draw attention to:
 - a. any Patent or Registered Design (or application for either) or unregistered design right you own or control which is or appears to be relevant to the Contractor Deliverables, the use of which by or on behalf of the Authority may give rise to a claim under Sections 55 or 56 of the Patents Act 1977, or Section 12 of the Registered Designs Act 1949, or Section 240 of the Copyright, Designs and Patents Act 1988;
 - b. any allegation made against you, whether by claim or otherwise, of an infringement of an intellectual property right (whether a Patent, Registered Design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
 - c. the nature of any allegation referred to under sub-paragraph 4.b, including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
 - d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b.
5. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.
6. If you have previously provided information under paragraphs 4 and 5 you can provide details of the previous notification, updated as necessary to confirm their validity.

Notification of Foreign Export Control Restrictions

7. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant contract, you must provide the following information in your Tender:
 - a. Whether all or part of any Contractor Deliverables are or will be subject to:
 - (1) a non-UK export licence, authorisation or exemption; or
 - (2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

- b. If requested, a summary of every existing, expected or known licence and restriction referred to in paragraph 7. a. This includes any related obligation or restriction and the extent they place an obligation or restriction on the Authority, including:
- (1) the exporting nation and the export licence number, where known;
 - (2) the Contractor Deliverables affected;
 - (3) the nature of the restriction and obligation;
 - (4) the authorised end use and end users;
 - (5) any specific restrictions on access by Third Parties, or by individuals based on their nationality, to the Contractor Deliverables; and
 - (6) any specific restrictions on re-transfer or re-export to Third Parties of the Contractor Deliverables or anything delivered or used in the performance or fulfilment of them.
- c. If requested, you must provide an outline of your mitigation plan to manage performance risks on any resultant contract based on paragraph 7. a.
8. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraphs 7. a and 7. b. If you are unable to obtain adequate information, you must state this in your Tender when responding to paragraph 7. a and 7. b.
9. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately.
10. If you have previously provided information under paragraph 7 you can provide details of the previous notification and confirm the validity.
11. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.
12. It is the Winning Tenderer(s) responsibility to ensure they comply with any restrictions stated in paragraph 7 during the life of the contract. This includes any restrictions the Authority has explicitly stated / clarified in any ITT documentation.
13. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 7.

Overseas Expenditure

14. You must provide details in your Tender of any expenditure outside the UK, including:
- a. country in which sub-contract is placed / to be placed;
 - b. name, division and full postal address of sub-contractor;
 - c. value of sub-contract; and
 - d. date sub-contract placed / to be placed.
15. Should you propose the supply of Articles of US origin the export of which from the USA are subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details in your Tender. This will allow the Authority to make a decision whether the export can or cannot be made under the auspices of the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

Import Duty

16. Council Regulation (EC) No 1502/2003 suspends Custom duties on a range of military weapons and equipment. For the purposes of this competition for any Contractor Deliverables eligible for suspension of import duties and not yet imported into the European Union, you must provide prices excluding and including Import Duty.
17. Where the Contractor Deliverables are exempt under Council Regulation (EC) No. 1502/2003, the Authority will issue a certificate for those Contractor Deliverables eligible for suspension of import duties.
18. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the collection of import duties. This includes but is not limited to obtaining Her Majesty's Revenue and Customs (HMRC) end use relief authorisation.

Sub-contracts Form 1686

19. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of either Reportable OFFICIAL or OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the Security Policy Framework – Contractual Process chapter. You can access a word version of Form 1686 on GOV.UK at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322603/Contractual_Process_-_Appendix_5_form.doc.

Small and Medium Enterprises

20. The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) Initiative; its aspiration is that 25% of spend, direct and through the supply chain, should go to SMEs by 2015. The MOD uses the EU definition of an SME.
21. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their sub-contractors are encouraged to make their own commitment and register with the Prompt Payment Code at: <http://www.promptpaymentcode.org.uk>.
22. Suppliers are also encouraged to work with the Authority to support the wider SME initiative. The link below to the Cabinet Office website provides information on the Government's Crown Representative for SMEs, a link to the definition of an SME and details on the SME initiative. <https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively/supporting-pages/making-sure-government-gets-full-value-from-small-and-medium-sized-enterprises>.
23. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 in the MOD Contracts Bulletin and further details can be obtained directly from:

BIP Solutions Ltd
Web address: www.contracts.mod.uk
Tel No. 0845 270 7099

Transparency, Freedom of Information and Environmental Information Regulations

24. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the Prime Minister's letter of May 2010 (<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>) and the information contained within SC3 Conditions of Contract Clause A14.
25. Before publishing the contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").

26. You should complete the attached Tenderer's Commercially Sensitive Information Form (NEFFFORM 539A) explaining which parts of your Tender you consider are commercially sensitive. It includes providing a named individual who may be contacted with regard to FOIA and EIR.
27. You should note that, while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

Electronic Purchasing

28. It is the intention to operate electronic trading. Babcock DSG is developing an electronic payment system; all potential suppliers will be notified of the new system and the migration plan in due course.

Change of Circumstances

29. Where circumstances have changed with regard to a Statement Relating to Good Standing or you have not previously submitted a Statement Relating to Good Standing select 'Yes' and submit a Statement Relating to Good Standing with your Tender. – please note that you have already submitted this as part of your DPQQ.

Asbestos, Hazardous Items and Depletion of the Ozone Layer

30. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' and provide further details in your Tender.

Reservist and other Supplier Support to the Armed Forces

31. The 2010 Strategic Defence and Security Review set out what our Armed Forces will look like and outlined the role of the Reserve Forces within that Future Force. Reservists will have a greater role, providing both a larger proportion of the force and Defence capabilities in certain specialist areas that are not practical or cost effective to maintain full time.
32. The MOD wishes to have a more sustained and enduring relationship with suppliers, on Reservist and other military personnel objectives, based on mutual benefit. The personnel objectives include:
- a. Employment of service leavers
 - b. Employment of wounded, injured or sick veterans
 - c. Employment of the partners of service personnel
 - d. Helping local cadet units
 - e. Support to Reservist employees
 - f. Encouragement of Reserve service
33. Of particular interest to Defence is the need to have more Reservists employed by reserves supportive employers as described in Chapter 4 of the White Paper, 'Reserves in the Future Force 2020: Valuable and Valued' available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210470/Cm8555-web_FINAL.pdf
34. The Authority therefore encourages all Tenderers, and their suppliers, to:
- a. consider whether they are able to support these objectives; and, if they are
 - b. sign the Corporate Covenant, declaring their support for the Armed Forces community.
35. Guidance on the various ways you can demonstrate your support through the Corporate Covenant is at [The corporate covenant - Detailed guidance - GOV.UK](#).
36. Specific guidance on how you can support the Reserve Forces, what your support means in practice, and what the potential benefits are for you can be found at www.sabre.mod.uk.

37. Please provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included in the websites.

Email address: covenant-mailbox@mod.uk

Address: Armed Forces Covenant Team
Zone D, 6th Floor, Ministry of Defence,
Main Building, Whitehall, London, SW1A 2HB

38. Where you decide to contribute to meeting the personnel objectives above, you should also report the outcomes of such contributions to the above address so they can be recorded and acknowledged.

39. Paragraphs 31 – 38 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender evaluation, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support and we are committed to working with you to this end.

Military Aviation Authority (MAA) Requirements

40. There are no MAA Requirements.

Bank or Parent Company Guarantee

41. A Bank or Parent Company Guarantee is not required.

COMMERCIAL COMPLIANCE MATRIX

The Tenderer shall indicate their compliance or otherwise with the terms of the ITT and the Terms and Conditions of the Draft Contract by completing the Compliance Statement below. Any proposed changes and the reasons for them must be clearly stated when completing the Compliance Statement, which you are required to return as part of your tender response:

Condition	State "Yes" if Compliant
CONDITIONS, DEFCONS & SPECIAL CONDITIONS - The Authority SHALL consider any non-compliance of the conditions listed below as a Commercially Non-Compliant bid.	
A – General Contract Provisions	
Interpretation	
Amendments to Contract	
Variation to Specification	
Precedence	
Severability	
Assignment of Contract	
Waiver	
Third Party Rights	
Governing Law	
Entire Agreement	
Disclosure of Information	
Publicity and Communications with the Media	
Protection of Personal Data	
Transparency	
Equality	
Child Labour and Employment Law	
Subcontracting	
Change of Control of Contractor	
Termination for Insolvency or Corrupt Gifts	
Consequences of Termination	
Dispute Resolution	
Termination for Convenience	

DEFFORM 47 ANNEX B
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Contractor's Records	
Duration of Contract	
Contractor's Warranties	
B – The Contractor Deliverables	
The Supply of Contractor Deliverables and Quality Assurance	
Environmental Requirements	
Disruption	
C – Price	
Contract Price	
D – Intellectual Property	
Third Party Intellectual Property – Rights and Restrictions	
E – Facilities and Assets	
Access to Contractor's Premises	
F - Delivery	
Authority's Remedies for Breach of Contract	
G – Payment and Receipts	
Payment	
Value Added Tax	
Debt Factoring	
H – Contract Administration	
Progress Monitoring, Meeting and Reports	
Authority Representatives	
Notices	
J – Project Specific DEFFCONS	
DEFFCON 16 Edn (12/04) - Repair and Maintenance Information	
DEFFCON 21 Edn (10/04)- Retention of Records	
DEFFCON 23 (SC) Edn (12/14) - Special Jigs, Tooling and Test Equipment	
DEFFCON 127 – Pricing Fixing Condition for Contracts of Lesser Value	
DEFFCON 129 Edn(03/15)- Packaging (for Articles Other Than Munitions	
DEFFCON 522 (Edn 07/99)- Payment	

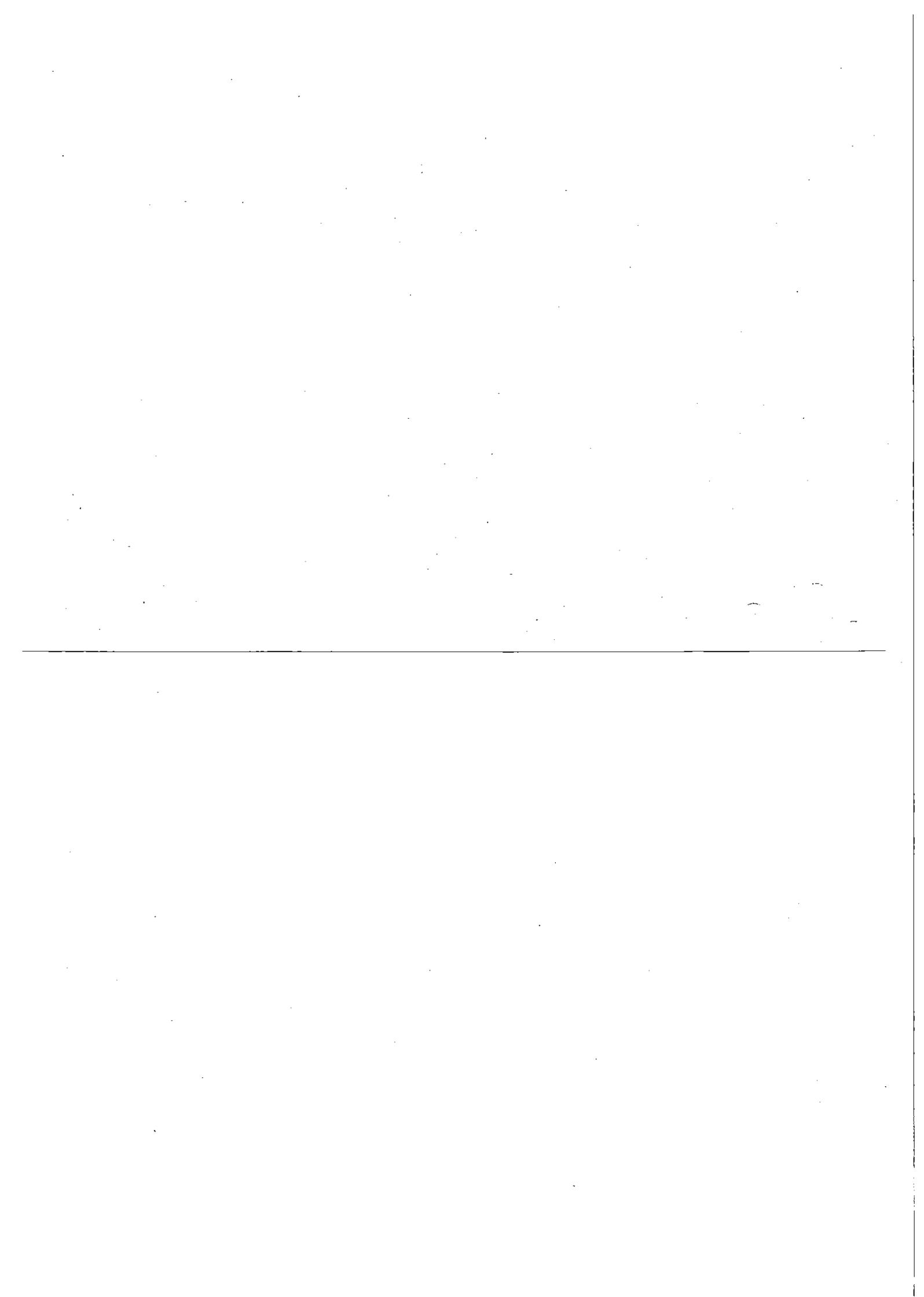
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DEFCON 523 (Edn 03/99)- Payment of Bills Using The Bankers Automated Clearing Service (BACS) System	
DEFCON 601 (SC) (Edn 3/15) – Redundant Material	
DEFCON 611 (SC) (Edn 12/14) – Issued Property	
DEFCON 624 (SC) Edn (3/15)- Use of Asbestos	
DEFCON 630 (SC) Edn (3/15)- Framework Agreements	
DEFCON 637 SC3 – Defect Investigation and Liability	
DEFCON 694 SC3 – Accounting for Property of the Authority	
K – Special Conditions	
Certificate of Conformity	
Marking of Contractor Deliverables	
Rejection	
Delivery/Collection	
Acceptance	
Packaging and Labelling (excluding Contractor Deliverables containing munitions)	
Diversion Orders	
Copyright	
Surge	
Contract Novation	
Disposal of Redundant Parts, Materials etc.	
L - Processes	
Scope of Contract	
Authority for Work	
Deficiencies and damage in Contractors Deliverables issued for repair	
Contractor Deliverables Considered Beyond Economic Repair	
Warranty	

Turnaround Times	
Remedies in The Event of Failure to Achieve	
Repair Turn Round Times	
Key Performance Indicators	
Delivery Instructions	
Non-Conforming Receipts	
New Stores Reject (NSR)	
Payment and Invoicing Procedure	
Order Book Reconciliation Report (under review subject to change)	
Orders from Babcock DSG Workshops - Ordering	
Orders from Babcock DSG Workshops - Delivery	
Additional Contractors Deliverables	
Schedules to Contract	
Schedule 1 – Definitions of Contract	
Schedule 2 – Schedule of Requirements	
Schedule 3 – Contract Data Sheet	
Schedule 4 – Contract Change Process	
Schedule 5 – Specification	
Schedule 6 – DEFFORM 539A	
Schedule 7 – Export Licence	
Schedule 8 - Acceptance	
Schedule 9 – Hazardous Articles, Materials or Substances	
Schedule 10 – DEFFORM 522A	
Schedule 11 – Application for Disposal of BR/BER Equipment Form	
Schedule 12 – Contract Status Report	
Schedule 13 – Discrepancy Report	
Schedule 14 – Strip and Survey Report	
Schedule 15 – Purchase Order	
Schedule 16 – Deliverable Quality Plan	
Schedule 17 – DEFFORM 315	
CONDITIONS - The Authority MAY consider any non-compliance of the conditions listed below as a Commercially Non-Compliant bid. Please add comments if non-compliant	
Key Performance Indicators – K9 L 8	

DEFFORM 47 ANNEX B
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DEFFORMS and Documents	Tick to indicate completion/inclusion
DEFFORM 47	
DEFFORM 539A - Tenderer's Commercially Sensitive Information Form (Schedule 6)	
DEFFORM 522A -Payment Condition Form (Schedule 10)	
Draft Quality Plan – Schedule 16	
Commercial Compliance Matrix	



DRAFT CONTRACT



trusted to deliver™

Babcock DSG

CONTRACT No: LSBU7/0200

For:
**THE REPAIR OF FIRE SUPPRESSION SYSTEMS
AND SUPPLY OF ASSOCIATED SPARES**

<p>Between Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland Babcock DSG Limited acting as the Authority's agent</p> <p>Babcock DSG Limited Building B15 MOD Donnington Telford TF2 8JT</p> <p>E-mail Address: nikinye@dsgrmod.uk Telephone Number: 01952 673906 Facsimile Number: 01952 673865 Babcock DSG acting as the Authority's Agent</p>	<p>And</p> <p>Contractor Name and address:</p> <p>E-mail Address: Telephone Number: Facsimile Number:</p>
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A2.	Amendments to Contract	
A3.	Variations to Specification	
A4.	Precedence	
A5.	Severability	
A6.	Assignment of Contract	
A7.	Waiver	
A8.	Third Party Rights	
A9.	Governing Law	
A10.	Entire Agreement	
A11.	Disclosure of Information	
A12.	Publicly and Communications with the Media	
A13.	Protection of Personal Data	
A14.	Transparency	
A15.	Equality	
A16.	Child Labour and Employment Law	
A17.	Subcontracting	
A18.	Change of Control of Contractor	
A19.	Termination for Insolvency or Corrupt Gifts	
A20.	Consequences of Termination	
A21.	Dispute Resolution	
A22.	Termination for Convenience	
A23.	Contractor's Records	
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**MOD Conditions for the Provision of Services:
Contract No: LSBU7/0200**

A General Contract Provisions

A1. Interpretation

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
 - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their 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 terms of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

A2. Amendments to Contract

- a. All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not Minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2a above has been issued.

A3. Variations to Specification

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that

they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition A2 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.

b. Any variations that cause a change to:

- (1) fit, form, function or characteristics of the Contractor Deliverables;
- (2) the cost;
- (3) Delivery Dates;
- (4) the period required for the production or completion; or
- (5) other work caused by the alteration,

shall be the subject to condition A2 (Amendments to Contract). Each amendment under condition A2 shall be classed as a formal change.

A4. 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) Sections A - H (and J - L, if sections J - L are included in this 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, where included, 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 A4, 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 A4.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 A21 (Dispute Resolution).

A5. Severability

If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

- a. 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
- b. 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.

A6. 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.

A7. 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.

A8. 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.

A9. Governing Law

- a. Subject to clause A9.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause A9.d and A21 (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 A9.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 clause A9 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause A9.a, A9.b and A9.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 clause A21 (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 clause A9 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.

(2) Clause A21.b shall be amended to read:

"In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.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 clause A9 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 this 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 its agents to accept on its 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 this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

A10. 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.

A11. Disclosure of Information

a. Subject to clauses A11.d, A11.e, A11.h and A14 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 its 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 its employees are aware of the Contractor's arrangements for discharging the obligations at clauses A11.a and A11.b before receiving information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses A11.a and A11.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 this Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(g) 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.

9. Before sharing any information in accordance with sub-clause A11.1 above, 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 its 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.

A12. 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.

A13. Protection of Personal Data

In the performance of the Contract, both Parties shall comply with their obligations as a data controller, as defined in the Data Protection Act 1998.

A14. Transparency

a. Subject to clause A14.b but notwithstanding condition A11, 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 A14.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 6 (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 A14.b. The Contractor acknowledges and accepts that its 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 A14 shall affect the Contractor's rights at law.

A15. Equality

- a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- b. Without prejudice to the generality of the obligation in clause A15 a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent Legislation in the country where the Contract is being performed.
- c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this condition A15 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.
- d. The Contractor agrees to take reasonable efforts to reflect this condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

A16. Child Labour and Employment Law

- a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

A17. Subcontracting

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.
- b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.
- c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:
 - (1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and
 - (2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.
- d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience in the event that the Authority exercises its right to terminate this Contract under Condition A22 (Termination for Convenience), with twenty (20) Business Days notice (or such other notice period as the Authority shall give under this Contract).
- e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on

the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Totton, Lancashire BL8 3DX (Telephone : 01204 880733) or <http://business.base-uk.org/procurement>

f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by clause D1.a (Third Party Intellectual Property – Rights and Restrictions). On receipt of any such notification the Authority shall issue a written authorisation to the Subcontractor in accordance with clause D1.g. Any such authorisation shall always be subject to clauses D1.j, D1.k and D1.n as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in any such claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.

g. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in the relevant parts of SC3 Schedule "Export Licence". Where it is not practicable to include the terms set out in SC3 Schedule "Export Licence", the Contractor shall report that fact and the circumstances to the Authority.

A18. Change of Control of Contractor

a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol BS34 8JH as soon as practicable of any intended, planned or actual change of Control. 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 change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that 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.

b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.

c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority's concerns to the Authority's satisfaction in accordance with clause A18.a, or has failed to supply or withhold the information required under clause A18.a.

d. If the Authority exercises its right to terminate in accordance with clause F1.a.(4) the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this clause A18.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

A19. Termination for Insolvency or Corrupt Gifts

The Authority may terminate the Contract with immediate effect, without compensation, by giving written Notice to the Contractor at any time after any of the following events:

Insolvency:

a. where the Contractor is an individual;

- (1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the "IA 86") or the court making an interim order pursuant to Section 253 of the IA 86;
 - (2) any composition, compromise, assignment, designation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;
 - (3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the "DAAS Act") is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;
 - (4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
 - (5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
 - (6) where the Contractor is either unable to pay its 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 its debts if:
 - (a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;
 - (b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;
 - (c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or
 - (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
 - (7) any analogous procedure or step is taken in any jurisdiction;
- b. where the Contractor is a firm:
- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under schedule A1 of IA 86 in respect of the Contractor;
 - (2) any composition, compromise, assignment, designation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;
 - (3) any event listed in clause A19.a occurs in respect of any partner of the Contractor

who is an individual in connection with a liability or debt of the Contractor;

(4) any event listed in clause A19.c occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(5) an event listed in clause A19.e in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(6) any event listed in this clause A19.b occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;

(7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(10) where the Contractor is either unable to pay its 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 its debts if:

(a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(b) it is unable to pay its debts in terms of section 221 of IA 86; or

(11) any analogous procedure or step is taken in any jurisdiction;

c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under schedule A1 of IA 86;

(2) any composition, compromise, assignment, assignment or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in

sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets.

(5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor.

(6) where the Contractor is either unable to pay its 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 its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or

(7) any analogous procedure or step is taken in any jurisdiction;

d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

Corrupt Gifts

f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees);

(1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

(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 Contract or any other contract with the Crown; or

(b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;

(2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 109 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;

(3) has entered into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

g. In exercising its rights or remedies to terminate the Contract under A19 f, the Authority shall:

(1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;

(2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

- (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf,
- (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

h. Where the Contract has been terminated under clause A19 f. of this Condition, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

A20. 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.

A21. 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 A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.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.

A22. Termination for Convenience

a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.

b. In the event that the Authority exercises its rights in accordance with clause A22.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.

c. The Authority's total liability under clause A22.b shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

A23. Contractor's Records

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition A11 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years from:

- (1) the end of the Contract term;

- (2) termination of the Contract; or
 - (3) the final payment,
- whichever occurs latest.

A24. 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.

A25. Contractor's Warranties

- a. The Contractor warrants and represents, that
 - (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its 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 itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
 - (3) from 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 its winding-up 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 it 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 its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

B The Contractor Deliverables

B1. 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;
 - (2) comply with all applicable Legislation; and
 - (3) discharge its 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 B1. 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 it becomes 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.

B2. Environmental Requirements

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

B3. Disruption

- a. The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- b. The Contractor shall inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and certainly no later than seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.
- c. The Contract shall have robust contingency plans in place to ensure that, in the event of industrial action by the Contractor's Team, provision of the Contractor Deliverables is maintained and such contingency plans shall be available for the Authority to inspect and / or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the contract period.

C Price

C1. 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 condition G2 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.

D Intellectual Property

D1. Third Party Intellectual Property – Rights and Restrictions

- a. The Contractor 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 D1.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 D1.a has been notified previously, the Contractor may meet its 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 clause 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 D1.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 purpose 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 the 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.

9. If, under clause D.1a, 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, its 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 D1.a.

k. Where authorisation is given by the Authority under clause D1.a, D1.f or D1.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, 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 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 D1 a - D1 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 D1 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 its 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 D1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

E Facilities and Assets

E1. Access to Contractor's Premises

The Contractor shall provide to the Authority's Representatives following reasonable notice, relevant accommodation / facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.

F Delivery

F1. Authority's Remedies for Breach of Contract

a. If the Contractor:

- (1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant date specified in Schedule of Requirements and / or the Specification;
- (2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;
- (3) supplies Contractor Deliverables that do not comply with clause B1. b;
- (4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with condition A18, or fails to supply or withholds the Information required under clause A18.a;
- (5) commits a persistent failure by failing to meet either:
 - (a) a single Key Performance Indicator (KPI) on 1 or more occasions in a rolling 3 month period, or
 - (b) otherwise commits a material breach of its obligations under the Contract.
- (6) otherwise commits a material breach of its obligations under the Contract.

the Authority shall have the right to exercise one or more of the following remedies:

- (7) where the Contractor commits a persistent failure in accordance with clause F1.a.(5) or where the breach is material in accordance with clause F1.a.(6), to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;
- (8) refuse to accept the provision of any further Contractor Deliverables by the Contractor and the Contractor shall refund to the Authority any sums paid in respect of the Contractor Deliverables that fail to comply with the terms of the Contract;
- (9) give the Contractor the opportunity at the Contractor's expense to carry out such remedial services as is necessary to correct the Contractor's failure or otherwise to rectify the breach within the Authority-specified time limits;
- (10) purchase substitute services from elsewhere;
- (11) claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

(a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or

(b) obtaining the Contractor Deliverables in substitution from another supplier.

b. In addition to the Authority's rights in clause F1.a., if the Authority reasonably believes at any time before the Contract Implementation Date that the Contractor will not be able to achieve Full Service Provision by the Contract Implementation Date then the Authority shall be entitled to terminate the Contract in whole or in part with immediate effect and without liability by giving written Notice to the Contractor.

c. In the event that the Authority terminates the Contract in whole or in part pursuant to clause F1.a.(7) or F1.b. or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

d. This condition F1 shall also apply to any remedial services carried out by the Contractor in accordance with clause F1.a.(9).

e. The Authority's rights and remedies under this condition F1 are in addition to its rights and remedies implied by statute and common law.

G Payment And Receipts

G1. Payment This payment clause (G1) does not apply – please see section L12 for further instructions/guidance.

a. Schedule 3 (Contract Data Sheet) specifies whether payment is to be enabled by P2P, by MOD Form 640, or by AG173. Payment may only be made using P2P where the Contractor has agreed a DEFFORM 30 with the Authority prior to the Effective Date of Contract and the DEFFORM 30 agreement is referenced in Schedule 3 (Contract Data Sheet).

b. Payment will be made by electronic transfer and prior to submitting any claims for payment under clause G1, the Contractor shall provide to DBS Finance the name and address of the bank, the sort code and account number to which payment should be made and, if requested by DBS Finance, any further information where payment is to be made outside of the UK.

c. In order to obtain approval for payment, the Contractor shall, upon completion of the Contract (or any part of the Contract for which the Contractor is entitled to payment):

(1) where payment is to be made using P2P, submit a properly completed DEFFORM 129J, in accordance with the instructions shown therein and in the explanatory notes;

(2) where payment is to be made using a MOD Form 640, submit the appropriate coloured copy of the MOD Form 640 to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet) and complete and dispatch the other appropriate coloured copies of the MOD Form 640 in accordance with the instructions shown therein; or

(3) where payment is to be made using an AG173, submit a properly completed AG173 (or AG210, as appropriate) to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet).

d. Upon receipt of the AG173 (or AG210, as appropriate), the Authority shall:

(1) approve payment by entering the relevant details into P2P to indicate receipt of the applicable Contractor Deliverables, or completing and signing the AG173/AG210, and returning it to the Contractor; or

c. The Contractor is responsible for the determination of VAT liability. In cases of doubt, the Contractor shall consult HMRC and not the Authority's Representative. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under this Contract, when the liability is other than at the standard rate of VAT, and any changes to it.

d. Where the provision of any 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.

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.

G3. Debt Factoring

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A6 (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 G3 shall be subject to:

(1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause G1.1;

(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 G3.b and G3.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 G3.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 G3.a.1 and G3.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 sub-clauses G3.a.(1) and G3.a.(2).

d. The provisions of condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

H Contract Administration

H1. 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 its Contractor's Representatives are suitably qualified to attend such meetings.

b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:

- (1) performance/Delivery of the Contractor Deliverables;
- (2) risks and opportunities;
- (3) any other information specified in Schedule 3 (Contract Data Sheet); and
- (4) any other information reasonably requested by the Authority.

H2. 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 H2.

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 A2 (Amendments to Contract).

H3. 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 a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt 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.

J. The project specific DEFCONs and DEFCON SC variants that apply to this Contract are:

DEFCON 16 Edn (1/0/04)	Repair and Maintenance Information
DEFCON 21 Edn (1/0/04)	Retention of Records
DEFCON 23 (SC) Edn (12/14)	Special Jigs, Tooling and Test Equipment
DEFCON 127 (Edn 12/14)	Pricing Fixing Conditions for Contracts of Lesser Value
DEFCON 129 (Edn 03/15)	Packaging (for Articles Other Than Munitions).
DEFCON 522 (Edn 07/99)	Payment
DEFCON 523 (Edn 03/99)	Payment of Bills Using The Bankers Automated Clearing Service (BACS) System
DEFCON 601 SC3 (Edn 12/14)	Redundant Material
DEFCON 611 SC3 (Edn 12/14)	Issued Property
DEFCON 624 (SC3) Edn 03/16	Use of Asbestos
DEFCON 630 (SC) Edn 3/15)	Framework Agreements
DEFCON 637 SC3 (Edn 02/15)	Defect Investigation and Liability
DEFCON 694 SC3 (Edn 12/14)	Accounting for Property of the Authority

K. The special conditions that apply to this Contract are:

The below conditions relate to both the Repair element (LOT 1) and the Supply of Associated Spares (LOT 2), unless otherwise stated.

K1. 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 A23 (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 c. The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with condition A23 (Contractor Records);

K2. Marking of Contractor Deliverables

- a. The Contractor shall ensure that each Contractor Deliverable is marked clearly and indelibly:
 - (1) in accordance with the requirements specified in Schedule 3 (Contract Data Sheet, or if no such requirement is specified, with the MOD stock reference number or alternative reference number specified in Schedule 2, (Schedule of Requirements);
 - (2) where the Contractor Deliverable has a limited shelf life, with the cure date/date of manufacture or expiry date expressed as specified in Schedule 3 (Contract Data Sheet); or in the absence of such requirement, they shall be marked as month (letters) and year (last two figures); and
 - (3) ensure that any marking method used does not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- b. Where it is not possible to mark a Deliverable with the required particulars, these should be included on the package in which the Deliverable is packed, in accordance with DEFCON 129.

K3. Rejection

- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). 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 a. shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified within 20 (twenty) Business Days.

K4. 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 a Delivery Note (as specified in Schedule 3 -Contract Data Sheet);
 - (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 DEFFORM 111 at 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 shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 850, or a Delivery note;
 - (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 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 c.

K5. 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 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 K3.b has elapsed.

K6. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

a. The Contractor shall pack or have packed the Contractor Deliverables:

- (1) in accordance with any requirements specified in Schedule 2, (Schedule of Requirements) (which if represented by packing codes shall be interpreted by reference to DEFFORM 96 and DEF STAN 81-41 (Part 1));
- (2) to ensure that each Deliverable may be transported in an undamaged and serviceable condition.

b. The Contractor shall ensure that each package containing the Contractor Deliverables is labelled to include:

- (1) the name and address of the Consignor and Consignee as specified in Schedule 3 (Contract Data Sheet) including:
- (a) the Delivery destination/address if not of the Consignee;
- (b) the transit destination/address (for aggregation/disaggregation, onward shipment etc.);
- (2) the description and quantity of the Contractor Deliverables enclosed;
- (3) the full 13 digit NATO Stock Number (NSN) where the UK is registered as a user of it, or, where the requirement does not have an NSN, with the alternative reference number specified in Schedule 2, (Schedule of Requirements);
- (4) the makers part, catalogue, serial or batch number as appropriate;
- (5) the Contract number (call off order numbers if enabling or as appropriate);
- (6) any statutory Hazard markings and any handling markings, including the mass of any package which exceeds 3kg;
- (7) the Packaging level (Military J, N or P, special H, Commercial A etc.) as specified in Schedule 2, (Schedule of Requirements for Associated Goods);
- (8) where applicable, any particulars which cannot be marked on each Contractor Deliverable in accordance with clause K2.b;
- (9) any additional markings specified in Schedule 2, (Schedule of Requirements);
- (10) the Primary Packaged Quantity (PPQ) (if Trade Packaging) and
- (11) if Trade Packaging to be marked in blue "TRADE PACKAGE" or if Export Trade Packaging to be marked in black "EXPORT TRADE PACKAGING".

Where UK Military or NATO Packaging is required, labelling of the Contractor Deliverables shall be in accordance with DEF STAN 81-41 (Part 6) and clause b.

c. Bar code markings shall be applied to the external surface of each package and to each PPQ package within. The minimum information shall include: the full 13 digit NSN, Denomination of Quantity (D of Q) see DEFFORM 96, actual quantity in package, Serial

Number and/or batch number, if applicable. The bar code symbology used shall meet the requirements of STANAG 4329. Code 39 shall be the default symbology for the Packaging marking application. Requirements for positioning bar codes are defined in DEF STAN 81-41 (Part 6).

d. Where the Contractor Deliverables are, or contain Dangerous Goods, the Packaging level is always Trade or Export Trade Packaging not Military Level as noted in DEF STAN 81-41 (All Parts).

e. Where UK Military or NATO Packaging is required, the Contractor shall meet the requirements as specified in Annex A to Schedule 2, (Schedule of Requirements for Associated Goods). The Contractor Deliverables shall be contained in packages which comply with the requirements of DEF STAN 81-41 (parts 1, 2 and 5) and be capable of meeting the appropriate test requirements of DEF STAN 81-41 (part 3).

f. Where there is requirement to design UK Military or NATO level Packaging, the work shall be undertaken by a company which is registered and certified to Military Packaging Accreditation Scheme (MPAS), (ISO 9001 based), or which is able to demonstrate that its quality systems and Military package design expertise are of an equivalent standard. Military Level Packages shall be designed to comply with the relevant requirements of DEF STAN 81-41, testing to DEF STAN 81-41 (Part 3) or DEF STAN 00-35. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-41 (Part 4).

g. New designs shall not be made where there is an existing SPIS or one that may be easily modified to be in accordance with the contract requirements. (see clause f.). Application should be made to the Project Team (PT) or other access point for a search to establish the SPIS status using DEFFORM 129a (Application for Packaging Designs and Authorisation for Package Design Work); media format as per clause i.

h. Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design.

i. SPIS designs are maintained on a central Master Packaging Database (MPD), the SPIS Index (SPIN), held on the MOD design repository or other authorised secure servers, for monitoring by the MOD and review by MPAS certified contractors and the MOD.

j. All SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format which shall be Adobe "PDF" compatible with Adobe Acrobat version 5. Any other format shall be agreed between the Packaging Design Authority (PDA) and MOD and must be compatible with access to SPIN.

k. Production of Military Level Packaging, where it is necessary to use a SPIS design the Packaging manufacturer should also be a registered contractor as stated in clause g. The manufacturer is responsible for confirming that the design is suitable.

l. Minor alterations/updates and similar to existing designs may be carried out by MPAS Certified designers, all major/significant changes and new designs need to be authorised by the Authority's Representative (Project Manager) (unless that power is delegated to a Prime or MPAS Registered company).

m. Intellectual Property Rights (IPR): the MOD shall retain the rights to the SPIS designs or to copy or use any information relating to them, if otherwise specified.

n. Where applicable one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor is the PDA, they shall:

(a) On receipt of instructions received from the Authority's Representative,

(Project Manager), prepare the required package design in accordance with DEF STAN 81-41;

(b) Where the Contractor is certified they shall, on completion of any design work, provide the Authority's Representative (Project Manager) 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 certified organisation, they shall obtain approval for their design from a certified organisation before proceeding, then continue with sub-clause n.(1)(b) of this condition.

(2) Where the Packaging contractor is not the PDA and is un-certified, they shall not produce, modify, or update etc SPIS Designs. They shall obtain current SPIS design(s) from SPIN or a certified organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they shall apply for SPIS information as soon as practicable after receipt of Contract or order.

(3) Where the Contractor is un-certified and has been given authority to produce, modify, and update SPIS Designs by contract, they shall obtain approval for their design from a certified organisation before proceeding, then continue with sub-clause n.(1)(b) of this condition.

(4) Where the Contractor is not a PDA but is certified, follow sub-clauses n.(1)(a) and (b) of this condition.

The Contractor shall note that all documents supplied as SPIS designs shall be considered as Contract Data Requirement.

o. The Contractor shall comply with the requirements for the design of Military Packaging as follows:

(1) Where there is a requirement to design UK Military or NATO Level Packaging, the work shall be undertaken by a certified organisation, or one that although non-certified is able to demonstrate that its Quality Systems and Military Package Design expertise are of an equivalent standard.

The certification scheme (MIPAS) detail is available from:

DES IMOC SCP Packaging

MOD Abbey Wood

Bristol, BS34 8JH

Tel: +44(0)30679-35353

DESIMOCSCP_Pkg@mod.uk

(2) Military Level packages shall be designed to comply with the relevant requirements of DEF STAN 81-41, testing to DEF STAN 81-41 (Part 3) or DEF STAN 00-35. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-41 (Part 4);

(3) all Packaging contractors on receipt of a requirement shall search SPIN or apply for a search of SPIN to establish the SPIS status (using DEFFORM 129a 'Application for Packaging Designs or their Status', media format as per clause 9.);

(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 Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated in this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information as with SPIS, see clause 4;
- (6) all SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format;
- (7) the default electronic media format of a SPIS shall be Adobe "PDF" compatible with SPIN requirements;
- (8) manufacture of Military Level Packaging, where it is necessary to use a SPIS design then the packaging manufacturer should also be a certified contractor as per clause a. The Packaging manufacturer is responsible for confirming that the design is suitable.
- p. The Authority shall retain all Intellectual Property Rights (IPR) relating to the designs unless otherwise agreed in writing.
- q. If special jigs, tooling etc., are required for the production of Military Packaging, the Contractor shall obtain written approval from the Authority's Representative (Commercial) before providing them.

K7. 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. Where necessary the Authority may issue (or having issued, cancel) a Diversion Order for urgent Delivery of the Contractor Deliverables identified in it:
 - (1) where a Diversion Order is issued the Contractor Deliverables are to be Delivered by the quickest means available, unless otherwise directed;
 - (2) a Diversion Order which is beyond the scope of the Contract is to be returned immediately to the Authority's Representative (Commercial) with an appropriate explanation;
 - (3) if the terms of the Diversion Order are unclear, the Contractor shall contact the Authority's Representative who issued it immediately for clarification or further instruction, copying the Authority's Representative (Commercial) in on all correspondence;
 - (4) the Contractor shall be entitled to any additional Delivery and Packaging costs generated in complying with the Diversion Order or cancellation thereof, claims for which are to be submitted by the Contractor to the Authority's Representative (Commercial) together with appropriate receipts and shall be priced and agreed in writing as a amendment to the Contract in accordance with condition A2. The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and Packaging costs.

K8. Copyright

- a. This Condition shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, except that it shall not apply to copyright works consisting of technical data and software where such rights are granted elsewhere in the Contract
- b. The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.

- c. The Contractor agrees not to publish any copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.
- d. The Authority shall have, in respect of any copyright work to which this Condition applies, a free licence:
 - (1) to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to clauses b., c. or d. of this condition, be made available to any third party;
 - (2) to issue the work or any part of the work or any copy of the work or any part thereof to any contractor or agent for the purpose of use only in connection with a contract for the United Kingdom Government for the study, management, evaluation, and/or assessment of the work, provided that any such contractor or agent shall be placed under an obligation which restricts disclosure and use of such work to the said purpose;
 - (3) to issue the work or any part of the work or any copy of the work or any part thereof to the government of a nation who is a member of the EU or NATO or bodies forming part of said groupings, to the Governments of Australia, New Zealand and Japan or such other government(s) of nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;
 - (4) to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes.Provided that, subject to any pre-existing rights of the Authority, clauses c. and d. shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract. Clauses c. and d. shall apply to all works or part thereof unless otherwise marked by the Contractor in accordance with clause f. below.
- e. As soon as it becomes aware that any copyright work or part thereof Delivered or proposed to be Delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall inform the Authority and upon Delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.
- f. The Contractor may mark or include in any copyright work to which this Condition applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.
- g. This Condition shall constitute an "agreement to the contrary" for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.
- h. In this Condition "copyright work" shall be understood to include any works, data or other materials in which a database right subsists.

K9. Key Performance Indicators and Performance Management

The Contractor's performance of the Contract shall be monitored and measured using the agreed Key Performance Indicators (KPIs) and Remedies within Section L of this Contract.

K10. Surge

The Contractor shall have a surge production capability to cope with times of tension, transition to war and other operational needs.

The Authority will provide the Contractor with as much notice of surge requirements as possible. However, in particular circumstances, the notice period could be 7 days. The Contractor shall maintain plans to meet future surge requirements

Surge capability is defined as an increase in output derived from re-deployment of resources, overtime, additional shifts or additional labour.

K11. Contract Novation

The Authority may notify the Contractor that agreement has been reached to transfer the business and assets, or substantially all of the business and assets, of the Authority to Babcock DSG Limited. The Contractor agrees that, if it is so notified by the Authority, then with effect from the Completion Date or other date as stipulated by the Authority at its sole discretion:

- (1) The Authority's rights, obligations and liabilities under this Contract will be automatically transferred to Babcock DSG Limited in place of the Authority without the need for any consent or action by the Contractor or the Authority;
- (2) Babcock DSG Limited will automatically become responsible for all future obligations (the "Assumed Obligations") owed by the Authority to the Contractor in respect of this Contract;
- (3) The Authority will be released automatically from the assumed obligations.

The Contractor further agrees at the request of the Authority to enter into any further agreement or document and take any formal steps which are necessary or desirable at the time to give effect to these provisions.

If this Contract is novated pursuant to Clause a) above then Babcock DSG Limited shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior written consent of the Contractor.

The Contractor shall disclose to Babcock DSG Limited such confidential information (which may include commercially sensitive information) as may be requested for the operation of the Contract. Where third-party consent is required before such Confidential Information can be disclosed, the Contractor shall use its best endeavours to obtain such consent. Babcock DSG Limited shall only use such Confidential Information for purposes relating to the performance of the Contract and for no other purposes.

The Authority reserves to itself the right at its sole discretion to appoint an agent to manage this Contract, and to give directions to the Contractor, on its behalf. In the event of such an appointment, the Authority will notify the Contractor of the identity of the agent and of the scope of the agent's authority to so act.

K12. Disposal of Redundant Parts, Materials Etc – LOT 1 only

a. All parts, materials etc arising from the Contractor Deliverables issued to the Contractor for repair, whether serviceable or not, shall remain the property of the Authority, and any such parts, materials etc, not used in the repair of the Contractor Deliverables shall be disposed of as follows:

- (1) Serviceable and economically repairable parts shall be dealt with in accordance with the instructions of the Authority.
 - (2) All unserviceable parts, materials etc certified by the Repair Manager as workshop salvage shall be disposed of by the Contractor on the Authority's behalf on fair and reasonable terms. Where required by the Repair Manager, such parts, materials etc, shall be dismantled and disposed of under his supervision so as to preclude the possibility of re-sale in their existing form.
 - (3) Unless other arrangements have been agreed with the Authority, a list of the unserviceable parts, materials etc, disposed of under sub-clause 1, above countersigned by the Repair Manager, shall be furnished to the Procurement Branch together with a statement of the proceeds.
- B. If there are no arising's of unserviceable parts, materials etc, the Contractor shall, on the conclusion of the Contract furnish a certificate to that effect, countersigned by the Repair Manager, to the Procurement Branch.

L. **The processes that apply to this Contract are:**
The below processes relate to both the Repair element (LOT 1) and the Supply of Associated Spares (LOT 2), unless otherwise stated.

L1. Scope of Contract

The Contract shall be for the Repair of Fire Suppression Systems and Supply of Associated Spares detailed at Schedule 2 (SOR) to the Contract on an as required basis to the latest OEM Specification in accordance with the Repair Specification at Schedule 5 (Lot 1 only) to the Contract.

L2. Authority for Work – LOT 1 only

A Purchase Order will be sent to the Company at the same time as Contractor Deliverables are fed in for repair/remanufacture. The Authority shall not be liable, in any way, for work undertaken by the Contractor without receipt of this Purchase Order (a sample of which is at Schedule 15) each of which shall bear a unique order number and Job No. e.g. PR15***** (DIIN).

The Purchase order will be electronically sent to:

To ensure that Purchase orders are sent to the correct location please can you identify a single mailbox location where all orders can be sent from Babcock DSG Ltd with your tender submission.

Following receipt of the Purchase Order and Contractor Deliverables for repair/remanufacture the Contractor is to complete a detailed Survey Report (a sample of which is at Schedule 14) of the Contractor Deliverables to establish their overall condition. Where standard repair/remanufacture prices fall within the agreed firm pricing as detailed on Appendix A Schedule 2 of the Contract, the Contractor is to proceed with the repairs.

Where the standard repair/remanufacture prices have not been agreed within the Contract or if the repair/remanufacture will deviate from the standard price, the Contractor is required to submit the Survey Report to the Repair Manager fully identifying the requirement for all work relating to the equipment including costs within 30 business days (unless otherwise agreed) of receipt of the Contractor's Deliverable.

No rebuild work is to be undertaken by the Contractor until the Survey Report and the associated costs have been sanctioned by the Repair Manager as fair and reasonable and Authority is given to proceed.

L3. Deficiencies and Damage in Contractor Deliverables Issued for Remanufacture – LOT 1 only

Contractor Deliverables issued for repair are to be checked on receipt for damage and correct nomenclature. Where there appears to be transit damage or deficiencies e.g. major components missing, or incorrect equipment, the Contractor shall, in the first instance, contact the Repair Manager who will decide on an appropriate course of action.

Following confirmation from the Repair Manager on the appropriate course of the action, the Contractor is to complete MOD Form 445 (Discrepancy Report – at schedule 13) which should then be sent to:

- (1) One Copy to MAC Branch Donnington
- (2) One Copy to the Repair Manager

L4. Contractor Deliverables Considered Beyond Economical Repair – LOT 1 only

When the Contractor considers the Contractor Deliverable to be Beyond Economical Repair (BER) he shall immediately advise the Repair Manager (as identified in box 2 of DEFFORM 111) in Schedule 3) of his findings on an Application for Disposal of BER Form P2, a sample of which is at Schedule 11. BER is defined as when the remanufacturing cost exceeds 80% of the replacement cost of the Contractor Deliverable. If approved, the Repair Manager shall issue an Army Form G1043 (AF G1043) which shall detail the disposal instructions.

All Contractor Deliverables subject to BER investigation shall be placed in quarantine by the Contractor and retained as such until further instructions are given by the Repair Manager. The Authority reserves the right to inspect/audit BER stock holdings at the Contractor's premises at any time throughout the duration of the Contract.

No work shall be carried out on any Contractor Deliverable which, after superficial examination, is considered to be BER.

Where the Repair Manager considers that a Contractor Deliverable is BER, the Contractor may be instructed to dismantle the Contractor Deliverable if serviceable or repairable parts can be recovered and such action is economical. Details of any parts recovered are to be brought on charge in the Contractor's Embodiment Loan account where repairable parts are to be segregated and accounted for separately.

Serviceable and repairable parts recovered shall be used as far as possible in the repair/remanufacture of other Contractor Deliverables issued under the Contract, subject to the prior approval of the Procurement Branch to a fair and reasonable price being agreed for the Contractor's purchase of such parts.

In the event that a Contractor Deliverable is considered BER and the Repair Manager's decision is to proceed with remanufacture/repair, the Contractor shall be paid a fair and reasonable price agreed in accordance with DEFCON 127 for all work properly undertaken.

L5. Warranty

The Contractor shall provide a warranty, which should be no less than 12 (twelve) months on any Repair work and from the date of fitting to the vehicle and/or equipment.

If within 12 (twelve) months of the repair/remanufacture date, upon which a repaired/remanufactured Contractor Deliverable is deployed into service, it fails, develops any defect or is otherwise found to be unsatisfactory other than as a result of an act or omission of the Authority under this Contract, the cost of rectification, including all transport costs shall be borne by the Contractor.

Under no circumstances shall the Contractor or any Sub-Contractor's proceed with repair/remanufacture of any other action which would invalidate the current warranty of the equipment. If any such equipment is received which the Contractor recognises as being under warranty, the Contractor should inform the Authority immediately.

L6. Turnaround Times

All Contractor Deliverables shall be repaired within the agreed turnaround time detailed on Appendix A to Schedule 2 (for Lot 1) and appendix B to Schedule 2 (for Lot 2) of this Contract. This is a figure in business days, which is the time from when a Contractor Deliverable and a purchase order (schedule 15) is received at the Contractor's premises to when the Contractor Deliverables are packaged and LS Donnington has confirmed a delivery slot.

If the Contractor is unable to undertake the required task within the turnaround time, the Contractor must notify the Authority within one week of receipt of the Contractor Deliverable with detailed reasons why the Contractor is unable to meet the turnaround time. The Authority shall have absolute discretion to extend the turnaround time.

If the Authority agrees to extend the turnaround time they shall notify the Contractor of the varied turnaround time by updating the Contract Status Report as soon as possible. The varied turnaround time shall be no longer than 25% of the original turnaround time.

For the purposes of this Contract, 'business days' shall refer to Monday – Friday, excluding all Weekends, Bank Holidays and the seven (7) day period encompassing Christmas Day and New Year's Day (25th Dec and 1st Jan respectively).

The Contractor shall monitor performance of each repair against the turnaround time and shall provide a Contract Status Report in accordance with Clause H1 and Schedule 3 to the Contract. This information is to be detailed on a monthly basis in accordance with the Contract Status Report at Schedule 12 of the Contract. The report shall be sent to the Authority's Procurement Manager and Repair Manager as identified at Box 1 and 2 of the DEFORM 111.

L7. Remedies In The Event Of Failure To Achieve Repair Turnaround Times LOT 1 only

It is recognised by both parties that should delivery of Contractor Deliverables detailed at Schedule 2 repaired under the Contract be delayed beyond the agreed Repair Turnaround Times, the Authority will suffer loss and damage thereby.

Achievement of Repair Turnaround Times will be measured in accordance with the Key Performance Indicators at Clause K9 and L8.

In the event that a rebate becomes payable by the Contractor to the Authority, the amount of the contractors claim for payment will be reduced accordingly upon submission.

Schedule 2	In the event of failure to meet a contracted turn round time	Reduction in Repair cost per Contractor Deliverable (%)
	Up to 30 days exceeded	10%
	31-60 days exceeded	15%
	60+ days exceeded	20%