

Contract Purchase Agreement PA0000000249



Supplier Details:

Company NPL MANAGEMENT LIMITED NATIONAL PHYSICAL LABORATORY
Contact
Address Hampton Road
Teddington
TW11 0LW

Submit your response to:

Company Dstl
Contact **Redacted Under FOIA**
Address Dstl Porton Down
Porton Down

Salisbury
SP4 0JQ
UNITED KINGDOM

Phone **Redacted Under FOIA**
Fax
E-mail **Redacted Under FOIA**

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Agreement Reference: Catch The Chem Bio Scent



Procurement BU **Dstl**

Agreement	PA0000000249
Agreement Date	25-APR-2022
Revision	0
Agreement Amount	96,518.00 GBP

Supplier **NPL MANAGEMENT LIMITED NATIONAL
PHYSICAL LABORATORY
Hampton Road
Teddington
TW11 0LW**

Notes All currency values in this CPA are: GBP = Pound Sterling

Customer Number	Account	Supplier Number	Payment Terms	Freight Terms	FOB	Shipping Method
		Redacted Under FOIA	Redacted Under FOIA			
Start Date	End Date	Confirm To				
22-Apr-2022	Redacted Under FOIA	Redacted Under FOIA	Redacted Under FOIA	Phone		
			Redacted Under FOIA			

Contract Terms and Conditions



The Science Inside
Defence Science and Technology Laboratory

Contract No: PA0000000249

For:

Catch the ChemBio SCENT! (Phase 1) - Sample preparation free, rapid mass spectrometry surface analysis for determination of complex chemical constituents - Phase 1

Between The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland	And National Physical Laboratory Management Ltd
Team Name and Address: Dstl Commercial Services Dstl Porton Down Salisbury SP4 0JQ	Contractor Address: Hampton Road Teddington Middlesex TW11 0LW

Email: Redacted Under FOIA	Email: Redacted Under FOIA
Tel: Redacted Under FOIA	Tel: Redacted Under FOIA

1. Definitions in the Contract

The Authority means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown;

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

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

Control means the power of a person to secure that the affairs of the Contractor (or Subcontractor) are conducted in accordance with the wishes of that person by the means of holding shares, or possession of voting powers in, or in relation to the Contractor; or by virtue of any powers conferred by the constitutional or corporate documents, or by any other document regulating the Contractor (or Subcontractor, as the case may be); and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

Contract means the agreement concluded between the Authority and the Contractor, including all terms and conditions, schedules, specifications, plans, drawings, and other documentation, expressly made part of the agreement in accordance with Clause 2.b;

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

Contractor means the person, firm or company specified as such in the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be;

Contractor Commercially Sensitive Information means the information listed as such in Schedule 4 (Contractor's Commercially Sensitive Information Form), which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

Contractor Deliverables means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule of requirements.

Data Protection Legislation means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to: (1) UK GDPR; (2) Data Protection Act (DPA) 2018; and (3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

Default means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub[1]contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default

Effective Date of Contract means the date stated on the Contract or, if there is no such date stated, the date upon which both Parties have signed the Contract;

Firm Price means a price excluding Value Added Tax (VAT) which is not subject to variation;

Government Furnished Assets (GFA) is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the

Authority;

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

Issued Property means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;

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

Legislation means, in relation to the United Kingdom, any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

Notices means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

Parties means the Contractor and the Authority, and Party shall be construed accordingly;

Quality Assurance Requirements means those requirements specified in Schedule 3 – Contract Data Sheet.

Sensitive Information means the information listed as such in Schedule 4 (Contractor's Sensitive Information), being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point which this Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

Service Credits means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in any applicable service credit regime in the contract;

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

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

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to the Contract except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations Act 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information; and

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

2. General

- a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- b. If there is any inconsistency between these terms and conditions and the associated documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:
- (1) these terms and conditions;
 - (2) the schedules; and
 - (3) the documents expressly referred to in the agreement.
- c. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
- d. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights or remedies. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- e. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
- f. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.f and for enforcement of any judgement, order or award given under English jurisdiction.
- g. 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.
- h. 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.
- i. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract. Where the Authority has terminated the Contract under Clause 2.i the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract.
- j. The Authority shall have the right to terminate the Contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

3. 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.

4. Transparency

a. Notwithstanding any other Condition of this Contract, including Clause 5, the Contractor understands that the Authority may publish the Transparency Information to the general public.

b. Subject to Clause 4.c, the Authority shall publish and maintain an up-to-date version of the Transparency Information in a format readily accessible and reusable by the general public under an open licence where applicable.

c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.

d. The Contractor shall assist and cooperate with the Authority as reasonably required to enable the Authority to publish the Transparency Information, in accordance with the principles set out above. Where the Authority publishes Transparency Information, it shall:

(1) before publishing redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIR, including the Sensitive Information;

(2) taking into account the Sensitive Information set out in Schedule 5, consult with the Contractor where the Authority intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and

(3) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

5. Disclosure of Information

Information received or in connection with the Contract shall be managed in accordance with DEFCON 531 (ISC) and Clause 4.

6. 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.

7. 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 the Contract;
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the Contract, by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

8. Change of Control of Contractor

a. The Contractor shall notify the Representative of the Authority at the address given in Clause 8.b, as soon as practicable, in writing of any intended, planned or actual change of Control of the Contractor, including any Sub-Contractors. The Contractor shall not be required to submit any Notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanctions arising from issuing such a Notice.

b. Each Notice of change of Control shall be taken to apply to all Contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section
Strategic Supplier Management Team
Spruce 3b #1301
Bristol BS34 8JH

and emailed to: **Redacted Under FOIA**

The representative of the Authority shall consider the Notice of change of Control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to the Effective Date of Contract.

c. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with Clause 8.a. The Authority shall act reasonably in exercising its rights of termination under this condition.

d. If the Authority exercises its right to terminate in accordance with Clause 8.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure

incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly discharged by the Contractor and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this Clause 8.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

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

9. Progress Monitoring, Meetings and Reports

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the Contract and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings. Any additional meetings reasonably required shall be at no cost to the Authority.

10. Supply of Contractor Deliverables and Quality Assurance

a. The Contractor shall supply the Contractor Deliverables to the Authority at the Contract Price. Unless otherwise stated in Schedule 3, the Contract Price shall be a Firm Price.

b. The Contractor shall ensure that the Contractor Deliverables:

(1) correspond with Schedule 2;

(2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and

(3) comply with any applicable Quality Assurance Requirements specified in the Contract.

c. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

11. Delivery / Collection

a. The Contract 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. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 11.a.

c. The Authority shall be deemed to have accepted the Contractor Deliverables within a reasonable time after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

12. Third Party Intellectual Property

a. Claims, liabilities and indemnities in respect of infringements or alleged infringements of third party intellectual property rights shall be handled in accordance with the provisions of DEFCON 632 (Edn 06/21).

b. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor

acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

13. Payment

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under Clause 13.b the Contractor will be required to register their details (supplier on-boarding) on the electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with Clause 13.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with Clause 13.b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of Clause 13.c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

14. Subcontracting and Prompt Payment

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a Subcontract, he shall cause a term to be included in such Subcontract:
 - (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
 - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
 - (3) providing that where the Contractor fails to comply with Clause 14.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 14.b(2) after a reasonable time has passed; and
 - (4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as Clauses 14.b(1) to 14.b(4).

15. 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 15.a the dispute shall be referred to

arbitration and 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 it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings related to the arbitration or otherwise. No report relating to the same shall be made beyond the tribunal, the Parties, their legal representative and any person necessary to the conduct of the arbitration, without the concurrence of all the Parties to the arbitration.

16. Termination for 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:

a. 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;

(2) commits or has committed any prohibited act or any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;

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

b. In exercising its rights or remedies to terminate the Contract under Clause 16.a. 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.

c. Where the Contract has been terminated under Clause 16.a. 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.

17. Termination for Convenience

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least 20 (twenty) business days written notice (or such other period as may be stated Schedule 3 – Contract Data Sheet).

b. Subject to Clause 17.d, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor, subject to:

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
 - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part thereof.
- c. The Contractor shall include in any Subcontract over £250,000 which it may enter into for the purpose of the Contract the right to terminate the Subcontract under the terms of Clauses 17.a to 17.b except that:
- (1) the notice period for termination shall be as specified in the Subcontract, or if no period is specified 20 (twenty) business days; and
 - (2) the Contractor's right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of Clause 17".
- d. The Authority's total liability under the provisions of this Clause shall be limited to the total price of the Contractor Deliverables payable under the Contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

18. Contractor's Records

- a. The Contractor and its Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- b. The Contractor and its Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
- (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
 - (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- c. With regard to the records made available to the Authority under Clause 18.a, and subject to the provisions of Clause 5, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

- (1) the end of the Contract term;
- (2) the termination of the Contract; or
- (3) the final payment,

whichever occurs latest.

19. Limitations on Liability

Unlimited liabilities

a. Neither Party limits its liability for:

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

b. The financial caps on the Contractor's liability set out in Clause 20.d below shall not apply to the following:

- (1) for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to *N/A*;
- (2) the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and condition 12 (Third Party IP – Rights and Restrictions);
- (3) the Contractor's indemnity in relation to TUPE at Schedule (*N/A*); and
- (4) breach by the Contractor of DEFCON 532A and Data Protection Legislation; and

c. The financial caps on the Authority's liability set out in Clause 20.e below shall not apply to the following:

- (1) for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to DEFCON 514A and condition 17; and
- (2) the indemnity given by the Authority in relation to TUPE under Schedule (*N/A*) shall be unlimited; and

Financial limits

d. Subject to Clauses 20.a and 20.b and to the maximum extent permitted by Law:

- (1) [throughout the Term] the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - (a) in respect of DEFCON 76 (ISC) £1 Million pounds £1,000,00.00 in aggregate;
 - (b) in respect of condition 2i £1 Million pounds £1,000,000.00 in aggregate;
 - (c) in respect of DEFCON 611 (ISC) £1 Million pounds £1,000,000.00 in aggregate; and
 - (d) in respect of condition 11b £1 Million pounds £1,000,000.00 in aggregate;
- (2) without limiting Clause 20.d.(1) and subject always to Clauses 20.a, 20.b, 20.b.(5) and 20.d.
- (3), the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with [insert cross reference to service credit/performance provisions] and [insert cross reference to any other relevant provisions], whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £1 Million pounds £1,000,000.00 in aggregate.

(3) on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 20.d.(1) and 20.d.(2) above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 20.d.(1) and 20.d.(2) of this Contract.

e. Subject to Clauses 20.a, 20.c, 20.c.(3) and 20.f, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

f. Clause 20.e shall not exclude or limit the Contractor's right under this Contract to claim for this Charges.

Consequential loss

g. Subject to Clauses 20.a, 20.b and 20.h, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- (1) indirect loss or damage;
- (2) special loss or damage;
- (3) consequential loss or damage;
- (4) loss of profits (whether direct or indirect);
- (5) loss of turnover (whether direct or indirect);
- (6) loss of business opportunities (whether direct or indirect); or
- (7) damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

h. The provisions of Clause 20.g shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

- (1) any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - (a) to any third party;
 - (b) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - (c) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (2) any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- (3) the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other

expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

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

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

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

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

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

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

Invalidity

i. If any limitation or provision contained or expressly referred to in this Clause 20 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 20.

Third party claims or losses

j. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and condition 12 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

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

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

No double recovery

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

20. Project Specific Conditions

Contractors Personnel - Research Workers

a. The Authority accepts the following students, supervisors or other representatives, agents or employees of the Contractor (or any sub-contractor) to work directly on the contract ("Research Workers"):

Redacted Under FOIA Section 40, Personal Information

b. The Contractor (and any sub-contractor) shall take all reasonable steps to avoid changes in the Research Workers once accepted. Where such a change is necessary, the Contractor shall obtain the prior written consent of the Authority, which shall not be unreasonably withheld.

c. Should it be necessary to change the Research Workers assigned to and accepted for the work under the Contract the Contractor shall notify the Authority in writing prior to the personnel starting work on the Contract. A Personal Particulars Form shall be completed for each additional person and sent to the Authority's Representative (Commercial – see Box 1 of Schedule 3 Annex A to the Contract – DEFFORM 111). The appropriate Dstl and MOD administrative procedures shall need to have been completed to the satisfaction of the Authority before any additional Contractor's Personnel may start work on this Contract.

d. All Research Workers engaged in support of the Contract shall have appropriate qualifications and competence and be in all respects acceptable to the Authority. The Authority reserves the right to reject any proposed Research Worker(s) whom it considers unsuitable for any reason. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.

e. The only exception to process described in this condition is when all of the Contractors proposed Research Workers hold a full current SC clearance with no restrictions. In that case, even if the classification of the contract work is below SECRET a Personal Particulars form is not required. The SC provides the Authority with the requisite level of assurance that the individual is who they say they are and is appropriate to work on the contract. The Contractor will be required to provide appropriate evidence to demonstrate to the satisfaction of the Authority that the proposed Research Workers hold a full current SC clearance.

21. DEFCONS

The following DEFCONS and DEFCONS SC variants that apply to this Contract are:

DEFCON 76 (ISC Edn 02/22) - Contractor's Personnel at Government Establishments

DEFCON 126 (Edn 06/21) - International Collaboration

DEFCON 503 (ISC Edn 08/21) – Formal Amendments to the Contract

DEFCON 514A (Edn 03/16) - Failure of Performance under Research and Development Contracts

DEFCON 531 ISC (Edn 09/21) - Disclosure of Information

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

DEFCON 608 (Edn 10/14) - Access and Facilities to Be Provided By the Contractor

DEFCON 620 (ISC Edn 08/21) – Contract Change Control Procedure

DEFCON 658 (ISC Edn 09/21) – Cyber

DEFCON 705 (Edn 06/21) – Intellectual Property Rights – Research and Technology

Schedule 1 - Additional Definitions of Contract

The following Additional Definitions apply in respect of the "LIMITATIONS ON LIABILITY" Clause detailed under the Project Specific Conditions at Section 21 of the ISC Terms and Conditions of Contract,

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

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

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

(ii) the Data Protection Act 2018;

(iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

(iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy [***and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party***];

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

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

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

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

Schedule 2 - Schedule of Requirements

The Schedule of Requirements is attached, File Reference: 20220422_ACC6028624_National Physical Laboratory_Schedule 2

Schedule 3 Contract Data Sheet

Condition 2.g - Contract Period	Effective date of Contract: 01.05.2022 The Contract expiry date shall be: 28.04.2023
Condition 7 - Notices	Notices served under the Contract can be transmitted by electronic mail Yes Notices served under the Contract shall be sent to the following address: Authority: Redacted Under FOIA Contractor: Redacted Under FOIA
Condition 9 - Progress Meetings	The Contractor shall be required to attend the following meetings: Type: In accordance with the Contractor's proposal ACC6028624 Frequency: In accordance with the Contractor's proposal ACC6028624 Location: Tbc
Condition 9 - Progress Reports	The Contractor is required to submit the following Reports: Type: Monthly Progress reports, and a Final Report Frequency: In accordance with the Contractor's proposal ACC6028624 Method of Delivery: In accordance with the Contractor's proposal ACC6028624 Delivery Address: Redacted Under FOIA
Condition 10.a - Contract Price	All Schedule 2 line items shall be FIRM Price and inclusive of any UK custom and excise or other duty payable other than those stated below: Line Items Clause 10. refers
Condition 10.b - Quality Assurance	Is a Deliverable Quality Plan required for this Contract? No If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within xx Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan. Other Quality Assurance Requirements:
Condition 11 - Delivery/Collection	Contract Deliverables are to be: Delivered by the Contractor

	Special Instructions: Collected by the Authority Special Instructions (including consignor address if different from Contractor's registered address):
Condition 17 - Termination for Convenience	The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here: The Notice period for termination shall be 20 Business Days

Appendix – Addresses and Other Information

1. Commercial OfficerName: **Redacted Under FOIA**Address: **Redacted Under FOIA**
Redacted Under FOIAEmail: **Redacted Under FOIA**Tel: **Redacted Under FOIA****2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)Name: **Redacted Under FOIA**Address: **Redacted Under FOIA**
Redacted Under FOIAEmail: **Redacted Under FOIA**Tel: **Redacted Under FOIA****3. Packaging Design Authority**

Organisation & point of contact:

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

4.(a) Supply / Support Management Branch or Order Manager:
Branch/Name:Tel:
(b) U.I.N.**5. Drawings/Specifications are available from****6. Intentionally Blank****7. Quality Assurance Representative:**

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

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit**Redacted Under FOIA**
Redacted Under FOIA
Redacted Under FOIA**8. Public Accounting Authority**

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

Tel: **Redacted Under FOIA**

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

Tel: **Redacted Under FOIA****9. Consignment Instructions**

The items are to be consigned as follows:

10. Transport. The appropriate Ministry of Defence Transport Offices are
A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JHAir Freight CentreIMPORTS Tel: **Redacted Under FOIA**EXPORTS Tel: **Redacted Under FOIA**Surface Freight CentreIMPORTS ☐ **Redacted Under FOIA**EXPORTS ☐ **Redacted Under FOIA****B. JSCS**JSCS Helpdesk No. **Redacted Under FOIA**JSCS Fax No. **Redacted Under FOIA**Users requiring an account to use the MOD Freight Collection Service should contact **Redacted Under FOIA** in the first instance.**11. The Invoice Paying Authority**

Bill Paying Branch:

The Contract Number must be shown on all invoices

Dstl Accounts Payable

PO Box 325

Portsmouth West, Portsmouth Hill Road

FAREHAM, HAMPSHIRE, PO14 9HL

United Kingdom

Tel: **Redacted Under FOIA**

Invoices for payment may be submitted via e-mail in PDF format to

Redacted Under FOIA**12. Forms and Documentation are available through *:**

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncott

Bicester, OX25 1LP **Redacted Under FOIA****Applications via fax or email:****Redacted Under FOIA*****NOTE**1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD InternetSite: **Redacted Under FOIA**

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

named in Section 1

Schedule 4 -

Schedule Not Used. Defcon 620 Applies.

Schedule 5 - Contractor's Commercially Sensitive Information Form (i.a.w. Clause 4) for Contract No:

Contract No
Description of Contractor's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: Email Address:

Schedule 6 – DEFENCE RESEARCH REPORT SPECIFICATION (DRRS) - DOCUMENT MARKING SCHEME (Note this will be included when DEFCON 705 is part of the contractual terms and conditions)

Reports comprising technical information DEFCON 705

Full Rights Version	Limited Rights Version
Conditions Of Supply – Full Rights This document is supplied in confidence to MOD in accordance with Contract No [ABC/1234, task XYZ/9876]. (see note 1) The document comprises information proprietary to [Rights Owner] and whose unauthorised disclosure may cause damage to the interests of [Rights Owner]. (see note 2) The document is supplied to MOD as a FULL RIGHTS VERSION under the terms of DEFCON 705 (Edn 09/20) and, except with the prior written permission of [Rights Owner], MOD's rights of use and dissemination in the document are limited to those set out in that Condition and the Contract for the use of Full Rights Versions of Technical Deliverables. Requests for permission for wider use or dissemination should be made to the relevant [Rights Owner] Account Manager.	Conditions Of Supply – Limited Rights This document is supplied in confidence to MOD in accordance with Contract No [ABC/1234, task XYZ/9876]. (see note 1) The document comprises information proprietary to [Rights Owner] and whose unauthorised disclosure may cause damage to the interests of [Rights Owner]. (see note 2) The document is supplied to MOD as a LIMITED RIGHTS VERSION under the terms of DEFCON 705 (Edn 09/20) and, except with the prior written permission of [Rights Owner], MOD's rights of dissemination of the document are limited to UK government departments and to service providers under the terms of Clause 14 of DEFCON 705. Requests for permission for wider use or dissemination should be made to the relevant [Rights Owner] Account Manager. (see note 3)

Notes:

1. This must always be the customer's contract number.
2. Include name of the Rights Owner(s), for example: supplier name, sub-contractor name(s) or a combination, as appropriate.
3. If conditions other than DEFCON 705 apply to third party information included in reports subject to DEFCON 705, then this should be clearly indicated.

Schedule 7 - DESIGN RIGHTS AND PATENTS (SUB-CONTRACTOR'S AGREEMENT)

Ministry of Defence

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

THIS AGREEMENT is made the [xxx] day of 20[xx]

BETWEEN [xxxxxx]

whose registered office is at [xxxxxxxx]

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

WHEREAS:-

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

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

1. The Sub-Contractor and the Secretary of State hereby agree to be bound to each other by the provisions of the Conditions as set out in the Second Schedule hereto.
2. No extension alteration or variation in the terms of the sub-contract between the main contractor and the sub-contractor and no other agreement between the main contractor and the sub-contractor relating to the work to be done under the sub-contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the sub-contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the sub-contract and the expression "the sub-contract items" shall have effect accordingly.

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

Signed on behalf of
the Sub-Contractor
(in capacity of [xxxxxx])

Signed on behalf of [xxxxxxx]

The Secretary of
State for Defence

THE FIRST SCHEDULE

The Sub-Contract Items are:-

[xxxxxx]

THE SECOND SCHEDULE

The Clauses which apply to this Agreement are:-

[xxxxxx]

except that:

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

Schedule 8 – GOVERNMENT FURNISHED ASSETS

No Government Furnished Assets Have Been agreed Or Requested under this Contract