



**Contract No: CSS/0111**

**For Provision of Upkeep  
Management Services for the  
Commercially Supported  
Shipping (CSS) Team**

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| <b>Between Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</b><br><b>Team Name and address:</b><br><br>Commercially Supported Shipping (CSS)<br>Defence Equipment and Support<br>Ash 2a #3203<br>Ministry of Defence Abbey Wood (South)<br>Bristol, BS34 8JH<br><br><b>E-mail Address:</b> DESShipsComrcl-CSS-3b1@mod.uk<br><b>Telephone Number:</b> 030 679 32173<br><b>Facsimile Number:</b> | <b>And</b><br><br><b>Contractor Name and address:</b><br><br><br><br><br><br><br><b>E-mail Address:</b><br><b>Telephone Number:</b><br><b>Facsimile Number:</b> |
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**The Schedules that apply to this Contract are:**

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| Schedule 1  | Definitions of Contract                                |
| Schedule 2  | Schedule of Requirements<br>Annex A to Schedule 2      |
| Schedule 3  | Contract Data Sheet<br>Annex A to Schedule 3           |
| Schedule 4  | Contract Change Process Procedure (i.a.w. clause A2.b) |
| Schedule 5  | Specification                                          |
| Schedule 6  | Contractor's Commercially Sensitive Information Form   |
| Schedule 7  | Export Licence (i.a.w. clause A17.g)                   |
| Schedule 8  | Firm Pricing (Rates)                                   |
| Schedule 9  | List of Authorised Demanders                           |
| Schedule 10 | Tasking Form                                           |
| Schedule 11 | DEFFORM 702 (Confidentiality)                          |
| Schedule 12 | Information Reporting                                  |
| Schedule 13 | Transfer of Undertakings (Protection of Employment)    |
| Schedule 14 | Integrated Project Management Plan (IPMP)              |

# **MOD Conditions for the Provision of Services:**

## **Contract No: CSS/0111**

### **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 A2.a 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 A.9.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
- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

g. Before sharing any Information in accordance with sub-clause A11.f 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, Tottington, 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 withheld 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, assignation 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, assignation 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, assignation 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 Contractors 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 108 – 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) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for 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 Contractor 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 purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of 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.
- g. 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.e, 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 – D.1.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 [ INSERT NUMBER] or more occasions in a rolling [ INSERT NUMBER] month period; or
  - (b) [ INSERT NUMBER] or more KPIs on a rolling [ INSERT NUMBER] month period,

where this Contract includes Core+ condition "Key Performance Indicators and Performance Management"; or

- (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**

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.e 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

(2) notify the Contractor in writing, giving reasons why it considers approval of payment may be withheld.

e. The Contractor shall submit a claim for payment to DBS Finance by either:

(1) using a properly prepared message structure and format for invoice payment using P2P in accordance with the arrangements set out, or referenced in DEFFORM 30; or

- (2) forwarding the completed AG173 / AG210 signed by the Authority, together with a properly completed DAB Form 10.
- f. The Authority shall pay all valid, properly completed claims for payment submitted by the Contractor to DBS Finance in accordance with clause G1.e on or before the day which is thirty (30) days after the later of:
- (1) the day upon which a valid request for approval of payment is received by the Authority in accordance with clause G1.c; and
  - (2) the date of completion of the part of the Contract to which the request for approval of payment relates.
- g. Where using the AG173 (or AG210), the period of thirty (30) days referred to in clause G1.f shall be exclusive of the number of days that elapse between the date the Contractor receives a MOD Form 640 or AG173 (or AG210) from the Authority showing payment approval in accordance with clause G1.d and the date DBS Finance receives a valid, properly completed claim for payment in accordance with clause G1.e.
- h. The approval of payment by the Authority under clause G1.d 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 condition F1 or otherwise.
- i. 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 Government Department.

## **G2. Value Added Tax**

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the provision of any Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).
- 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.i;
- (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 76 (SC3) (Edn 12/14) – Contractor's Personnel At Government Establishments  
DEFCON 127 (Edn 12/14) – Price Fixing Condition For Contracts Of Lesser Value  
DEFCON 630 (SC) (Edn 03/15) – Framework Agreements  
DEFCON 697 (SC3) (Edn 12/14) – Contractors On Deployed Operations  
DEFCON 703 (Edn 08/13) – Intellectual Property Rights - Vesting In The Authority

# **MOD Core+ Conditions for the Supply of Services: Contract No: CSS/0111**

## **K Special Conditions of Contract**

### **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 Annex A to Schedule 2 (Schedule of Requirements for Associated Goods) 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 Annex A to Schedule 2 (Schedule of Requirements for Associated Goods);
  - (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 Annex A to Schedule 2 (Schedule of Requirements for Associated Goods) 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. Acceptance**

- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in SC3 Core Plus Schedule "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 K5.b has elapsed.

### **K3. Overseas Expenditure**

a. The Contractor shall report, in writing, to the Authority details of any direct Overseas expenditure valued over £1 million likely to be incurred in the execution of the Contract immediately the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:

- (1) Contract No;
- (2) country in which subcontract placed/to be placed;
- (3) name, division and full postal address of Subcontractor;
- (4) value of subcontract as applicable to main Contract;
- (5) date placed / to be placed.

b. If no overseas orders valued over £1 million are to be placed, or are placed, the Contractor shall advise the Authority to this effect.

c. For the purpose of clauses a. and b. Overseas expenditure comprises only those direct payments made by the Contractor to:

- (1) Overseas firms; and
- (2) UK firms, including UK branches or subsidiaries of Overseas firms,

for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.

d. The Contractor shall submit any Information required by clause a. to the Authority's Representative (Commercial).

### **K4. 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.

## **K5. Pricing (Limit of Liability)**

a. Where a Task Authorisation Form (TAF) authorised by the Authority includes a Limit of Liability (LoL) the Contractor shall immediately inform the Authority's Representative detailed in Schedule 3 (Contract Data Sheet), either in writing or by e-mail, in the event that:

(1) the Contractor believes the work cannot be completed within the LoL specified on the TAF. In such circumstances the Contractor shall provide the Authority's Representative with the reasons for the potential overspend and an estimate for completing the outstanding work;

(2) spend has reached 75% of the LoL

b. The total amount to be paid by the Authority for work which is subject of the LoL shall not, without the approval in writing of the Authority, exceed the LoL. Where the Authority agrees to an increase in the LoL this will be authorised by the Authority's Representative.

## **K6. Travel and Subsistence**

a. The travel and subsistence rates at Schedule 8 (Firm Pricing (Rates)) to the Contract shall apply to tasks undertaken at locations other than the premises of the UK Contract Ship Repairers. The following terms and conditions shall also apply:

(1) Other travel costs (e.g. rail and air fares) shall be agreed on a case by case basis between the Contractor and the Authority's Representative. Receipted actual costs shall be payable on completion of each Task.

- (2) Flights by Commercial Airlines shall be by Economy Class, unless otherwise agreed by the Authority's Representative. Where it is necessary to travel by commercial airlines in pursuance of the Contract, the Contractor should use any benefits (e.g. Air Miles), if possible, to offset the costs of further travel taken on behalf of the Authority.
- (3) Claims related to vehicle insurance are inadmissible.
- (4) Travel and subsistence claims shall not be paid in respect of work at, or visits to, places five (5) miles or less from the Contractor's normal place of work.
- (5) The Contractor shall be responsible for ensuring that travel and subsistence costs are kept to a minimum and that overseers are employed efficiently to avoid unnecessary travel and subsistence costs.

#### **K7. Right To Extend The Contract**

- a. In consideration of the award of this Contract, the Contractor hereby grants to the Authority the following irrevocable options to extend the Contract by a further two (2) one years, in two (2) options of one (1) year each, in accordance with the terms and conditions of this Contract.
- b. The Authority will have the right to exercise the options by the specified dates:
  - (1) For option Year 6, 01 September 2021 to 31 August 2022, by no later than 01 June 2021;
  - (2) For option Year 7, 01 September 2022 to 31 August 2023, by no later than 01 June 2022;
- c. The Parties agree and acknowledge that the Authority has no obligation to exercise the rights conferred by this clause K19 and the Authority's right to extend this Contract shall lapse upon expiry of the periods specified in clause K19.b.(2) above.

#### **K8. Confidentiality**

- a. Overseeing activities may involve access to commercially sensitive information and prices supplied by the Authority. The Overseer shall be responsible for safeguarding this information in accordance with the Terms and Conditions of this Contract.
- b. Each Overseer shall be required to complete the DEFFORM 702 at Schedule 11 to this Contract. In addition, the Overseer may be subject to additional confidentiality agreements required by the Contract Ship Repairer.

#### **K9. Transfer of Undertakings (Protection of Employment)**

- a. See Schedule 13 (Transfer of Undertakings (Protection of Employment)) for the Conditions that apply to this Contract.

#### **K10. Integrated Project Management Plan (IPMP)**

- a. The Contractor shall demonstrate good project management practice in undertaking all activities under the Contract. The Authority and the Contractor shall adopt an open and honest approach at all times and ensure that potential risks to performance, cost and time are exposed at the earliest opportunity to enable them to be addressed to minimise any detrimental impact and maximise the benefit of any potential opportunities.
- b. The Integrated Project Management Plan (IPMP) shall define how the Contract activities shall be managed, outlining the processes, procedures and techniques to be used with details of how all activities, plans and programmes will be established, monitored, changed, controlled, integrated and communicated with the Authority.
- c. The IPMP shall adopt a consistent and coherent approach to project management and establish procedures and reporting mechanisms. Implementation of the IPMP will provide

the Authority with confidence in the Contractor's ability to deliver to time, cost and performance in accordance with the Contract and provide early visibility of potential issues so that mitigating action can be taken.

- d. No later than three (3) months from the date of this Contract, the Contractor shall update and finalise the draft Integrated Project Management Plan (IPMP) together with the associated Annexes at Schedule 14 (Integrated Project Management Plan (IPMP)) and issue to the Authority to review. The updated IPMP shall address the scope of work as set out in the Contract.
- e. The Authority will review the updated IPMP and associated Annexes and provide proposed amendments to the Contractor within ten (10) working days of receipt. Any such proposals shall be subject to agreement of the Contractor who shall incorporate all reasonable proposals from the Authority in to the IPMP within ten (10) working days of any discussion held between the parties as a result of the Authority's comments. Within 10 (ten) working days thereafter the Contractor shall submit the IPMP and associated annexes at Revision 1 status to the Authority as Schedule 14 (Integrated Project Management Plan (IPMP)).
- f. The IPMP shall cross reference to the Contract Conditions, the Specification and Pricing and all associated Annexes within the IPMP as applicable.
- g. The Contractor shall be responsible for the maintenance and updating of the IPMP throughout the life of the Contract.
- h. The IPMP shall comprise of the following Annexes:
  - (1) Annex A - Contract Set-Up Plan;
  - (2) Annex B – Qualifications and Experience Plan;
  - (3) Annex C – Communication, Relationship Management and Reporting Plan;
  - (4) Annex D – Risk Management Plan;
  - (5) Annex E – Quality Management Plan;
  - (6) Annex F- Exit Strategy Plan;
  - (7) Annex G – Project Monitoring and Process Management Plan

**L. The processes that apply to this Contract are:**

**L1. Tasking Process**

- a. Work required under the Contract shall be tasked in accordance with the procedures specified in this Condition.
- b. Only the individuals named at Schedule 9 (List of Authorised Demanders) to the Contract are authorised to task work under the Contract.
- c. All requirements will be initiated by the Tasking Authorisation Form (TAF) at Schedule 10 to the Contract, consisting of 5 parts, as follows:
  - PART 1 Details of the task required – to be completed by one of the designated Authorising Officers at Schedule 9 to this Contract.
  - PART 2 Allocation of Contract Task No. and Firm Price/Limit of Liability Quote – to be completed by the Contractor.
  - PART 3 Approval to proceed – to be completed by the Authority.
  - PART 4 Final Firm Price for the Task - to be completed by the Contractor. The Firm Price shall be supported by a full price breakdown for each day, showing the hours worked, travel and subsistence costs incurred etc.

PART 5 Acceptance of completion of the Task at the agreed Firm Price, and approval for payment on P2P - to be completed by the Authority.

- d. No work is to commence until a fully signed TAF Part 3 has been received.
- e. A minimum period of four weeks' notice will be given for each planned task. However, on occasions there may be a need for an urgent unplanned task, and the Contractor must be prepared to provide an immediate response to this requirement.
- f. For continuity, the individual appointed for each Task shall remain with that Task until completion.
- g. Where there is a need for several overseeing tasks to be carried out in the same area, the Contractor may, at the request of the Authorising Officer, be asked to combine the requirements into one assignment, to be covered by the same Overseer.

## **L2. Information Reporting**

- a. The Contractor shall maintain a list of all TAFs and their progress in the format detailed at Schedule 12 (Information Reporting) and provide this electronically to the Authority's Representatives on a monthly basis. This information will be an agenda item at the project review meetings.

## Schedule 1 - Definitions of Contract

### Core Definitions

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AG173</b>                         | means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>AG210</b>                         | means the MOD invoice form AG210 that suppliers submit as an invoice to enable a stage or milestone payment to be processed;                                                                                                                                                                                                                                                                                                                                                                |
| <b>Assets</b>                        | means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;                                                                                                                                                                                                                                                                                                                                                              |
| <b>Authority</b>                     | means the Secretary of State for Defence acting on behalf of the Crown;                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Authority's Representative(s)</b> | shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b;                                                                                  |
| <b>Business Day</b>                  | means any day excluding: <ul style="list-style-type: none"><li>a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;</li><li>b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and</li><li>c. such periods of holiday closure of the Contractor's premises of which the Authority is given written Notice by the Contractor at least ten (10) Business Days in advance;</li></ul> |
| <b>Central Government Body</b>       | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"><li>a. Government Department;</li><li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>c. Non-Ministerial Department; or Executive Agency.</li></ul>              |
| <b>Child Labour Legislation</b>      | means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.                                  |
| <b>Conditions</b>                    | means the terms and conditions set out in this document;                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Consignee</b>                     | means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be supplied;                                                                                                                                                                                                                                                                                                                                                     |
| <b>Contract</b>                      | means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition A2 (Amendments);                                                                                                                                                                                                                                                                                                                                                           |

|                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contract Implementation Date</b>                  | means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Contract Price</b>                                | 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;                                                                                                                                                                                                                                                                                                                                            |
| <b>Contractor</b>                                    | means the person who, by the Contract, undertakes to provide the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;                                                                                                                                     |
| <b>Contractor Commercially Sensitive Information</b> | means the Information listed in the completed Schedule 6 - 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;                                                                                                                                                                                                                                                                                                                                                            |
| <b>Contractor Deliverables</b>                       | means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification;                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Contractor's Representative</b>                   | means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract;                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Contractor's Team</b>                             | means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Control</b>                                       | <p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none"> <li>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</li> <li>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</li> </ul> <p>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;</p> |
| <b>Crown Use</b>                                     | in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;                                                                                                                                                                                                                                                                                                           |
| <b>DAB Form 10</b>                                   | means the MOD invoice summary form;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>DBS Finance</b>                                   | means Defence Business Services Finance, at the address stated at Annex A to Schedule 3 (Contract Data Sheet);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>DEFFORM</b>                                       | means the MOD DEFFORM series which can be found at <a href="https://www.gov.uk/acquisition-operating-framework">https://www.gov.uk/acquisition-operating-framework</a> ;                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DEF STAN</b>                   | means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;                                                                                                                                                                                                                                                                                    |
| <b>Deliver</b>                    | means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with SC3 Condition "Delivery / Collection" and Delivered and Delivery shall be construed accordingly;                                                                                                                                           |
| <b>Delivery Date</b>              | means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;                                                                                                                                                                                                      |
| <b>Design Right(s)</b>            | has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;                                                                                                                                                                                                                                                                                                         |
| <b>Effective Date of Contract</b> | means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;                                                                                                                                                                                                                |
| <b>Firm Price</b>                 | means a price (Excl. VAT) which is not subject to variation;                                                                                                                                                                                                                                                                                                                                          |
| <b>Full Service Provision</b>     | means the provision by the Contractor of all of the Contractor Deliverables in accordance with the Conditions of this Contract;                                                                                                                                                                                                                                                                       |
| <b>Information</b>                | means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract;                                                                                                                                |
| <b>Key Performance Indicators</b> | means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management";                                                                                                                                                   |
| <b>Legislation</b>                | means in relation to the United Kingdom: <ul style="list-style-type: none"> <li>a. any Act of Parliament;</li> <li>b. any subordinate Legislation within the meaning of section 21 of the Interpretation Act 1978;</li> <li>c. any exercise of the Royal Prerogative; or</li> <li>d. any enforceable community right within the meaning of section 2 of the European Communities Act 1972;</li> </ul> |
| <b>Minor Change</b>               | means any change that does not significantly/materially affect the nature of the Contractor Deliverables;                                                                                                                                                                                                                                                                                             |
| <b>MOD Form 640</b>               | means the MOD form in 5 separate parts which may be obtained from the address specified for obtaining MOD forms and documentation in Schedule 3 (Contract Data Sheet);                                                                                                                                                                                                                                |
| <b>Notices</b>                    | shall mean all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;                                                                                                                                                                                                                                                             |
| <b>P2P</b>                        | means the MOD electronic ordering, receipting and payment system;                                                                                                                                                                                                                                                                                                                                     |

|                                 |                                                                                                                                                                                                                                                                             |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Parties</b>                  | means the Contractor and the Authority, and Party shall be construed accordingly;                                                                                                                                                                                           |
| <b>Schedule of Requirements</b> | means Schedule 2 (Schedule of Requirements) and Annex A to Schedule 2, which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable; |
| <b>Specification</b>            | means Schedule 5 (Specification) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables;                                                              |
| <b>Subcontractor</b>            | means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);                                                                                                              |
| <b>Supported Businesses</b>     | means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;                                                                  |
| <b>Transparency Information</b> | means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.                                                                     |

## **Appendix A to Schedule 1 – Core+ Definitions of Contract**

### **Core+ Definitions**

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Articles</b>                          | means the Contractor Deliverables (goods and / or the services), including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. <b>(This definition only applies to Core Plus Schedule “Hazardous Articles, Materials or Substances supplied under the Contract” and any DEFCONs if either are included in this Contract);</b> |
| <b>Collect</b>                           | means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause K14.c and Collected and Collection shall be construed accordingly;                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Consignor</b>                         | means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>CPET</b>                              | means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Denomination of Quantity (D of Q)</b> | means the quantity or measure by which an item of material is managed;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Diversion Order</b>                   | means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Employee</b>                          | shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given. <b>(This definition only applies to the narrative condition “Security Measures”);</b>                                                                                                                                                                                                                                                                                                                                                             |
| <b>Evidence</b>                          | means either:<br><br>a. an invoice or delivery note from the timber supplier or subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or<br><br>b. other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET;                                                                                                                                                                                                                                                                                                                 |
| <b>FLEGT</b>                             | means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Hazardous Contractor Deliverable</b>  | 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;                                                                                                                                                                                                                                                                              |

|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Independent Verification</b>                       | means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to “BS EN ISO / IEC 17065: 2012 Conformity assessment - Requirements for bodies certifying products, processes and services”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”; |
| <b>Legal and Sustainable</b>                          | means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement”. The edition current on the day the contract documents are issued by the Authority shall apply;                                                                                                                                                                                                     |
| <b>Military Level Packaging</b>                       | Packaging that by the nature of the packaged items nature, or envisaged transport / movement or handling within the military supply chain and requires enhanced protection beyond that which commercial Packaging normally provides;                                                                                                                                                                                                                                                                                              |
| <b>Military Packaging Accreditation Scheme (MPAS)</b> | is a MOD sponsored scheme to accredit military packaging designers capable of producing SPIS designs acceptable to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS/DR14. MPAS detail is available from <a href="mailto:DESJSCSCM-EngTLS-Pkg@mod.uk">DESJSCSCM-EngTLS-Pkg@mod.uk</a> ;                                                                                                                                                                                 |
| <b>MPAS Registered Organisation</b>                   | is a packaging organisation having one or more MPAS Certificated Designers capable of Military level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;                                                                                                                                                                                                                                                                                                     |
| <b>MPAS Certificated Designer</b>                     | shall mean an experienced Packaging Designer trained and certified to MPAS requirements;                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>NATO</b>                                           | means the North Atlantic Treaty Organisation which is an intergovernmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Overseas</b>                                       | shall mean non UK or Foreign                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Overseer</b>                                       | A representative appointed by the Authority’s Representative (as identified in Schedule 3 (Contract Data Sheet for Contract No: CSS/0111) Clause H2.b), to oversee the programmed upkeeps/refits and repairs of RFA vessels and MOD Boats up to 50m.                                                                                                                                                                                                                                                                              |
| <b>Packaging</b>                                      | Verb. The operations involved in the preparation of materiel for: transportation, handling, storage and Delivery to the user;<br><br>Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;                                                                                                                                                                                                                                   |
| <b>Packaging Design Authority (PDA)</b>               | shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;                                                                                                                                                                                  |
| <b>Primary Packaging Quantity (PPQ)</b>               | means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;                                                                                                                                                                                                                                                                                                                                                         |

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Recycled Timber</b>                  | <p>means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers:</p> <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> <p>it excludes sawmill co-products;</p> |
| <b>Short-Rotation Coppice</b>           | <p>means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;</p>                                                                                                                                                                                                                                             |
| <b>STANAG 4329</b>                      | <p>means the publication NATO Standard Bar Code Symbolologies which can be sourced from Information at <a href="http://www.dstan.mod.uk/faqs.html">www.dstan.mod.uk/faqs.html</a>;</p>                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Timber and Wood-Derived Products</b> | <p>means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;</p>                                                                                                                                                                                                                                                                                          |
| <b>Virgin Timber</b>                    | <p>means Timber and Wood-Derived Products that do not include Recycled Timber.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

**Schedule 2 - Schedule of Requirements for Services for Contract No: CSS/0111**

**For: Provision of Upkeep Management Services for the Commercially Supported Shipping (CSS) Team**

| <b>Item Number</b> | <b>Contractor Deliverables</b>                                                                                                                       | <b>Notes to Supplier</b> | <b>Firm Price £ (ex-VAT)</b>                                      |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------------------------------------|
| 1                  | Provision of upkeep management services for MOD training boats, training ships and boats in accordance with Appendix A to Schedule 5 (Specification) | N/A                      | In accordance with the rates at Schedule 8 (Firm Pricing (Rates)) |
| 2                  | Assistance to the Authority in the writing of upkeep specifications, in accordance with Appendix B to Schedule 5 (Specification)                     | N/A                      | In accordance with the rates at Schedule 8 (Firm Pricing (Rates)) |
| 3                  | Provision of overseeing services for military equipment fits on RFA vessels, in accordance with Appendix C to Schedule 5 (Specification)             | N/A                      | In accordance with the rates at Schedule 8 (Firm Pricing (Rates)) |
| 4                  | Integrated Project Management Plan in accordance with Condition K10                                                                                  | N/A                      | N/A                                                               |

**Annex A to Schedule 2 (Schedule of Requirements for Associated Goods) for Contract No: CSS/0111  
For: Provision of Upkeep Management Services for the Commercially Supported Shipping (CSS) Team**

| <b><u>Contractor Deliverables</u></b> |                         |                             |               |                                                                 |                                                                      |               |           |                       |                                                                                      |
|---------------------------------------|-------------------------|-----------------------------|---------------|-----------------------------------------------------------------|----------------------------------------------------------------------|---------------|-----------|-----------------------|--------------------------------------------------------------------------------------|
| Item Number                           | MOD Stock Reference No. | Part No. (where applicable) | Specification | Consignee Address Code (full address is detailed in DEFFORM 96) | Packaging Requirements inc. PPQ and DofQ (as detailed in DEFFORM 96) | Delivery Date | Total Qty | Firm Price (£) Ex VAT |                                                                                      |
|                                       |                         |                             |               |                                                                 |                                                                      |               |           | Per Item              | Total inc. packaging (and Delivery if specified in Schedule 3 (Contract Data Sheet)) |
| N/A                                   | N/A                     | N/A                         | N/A           | N/A                                                             | N/A                                                                  | N/A           | N/A       | N/A                   | N/A                                                                                  |
| Total Firm Price                      |                         |                             |               |                                                                 |                                                                      |               |           |                       | N/A                                                                                  |

| Item Number | Consignee Address (XY code only) |
|-------------|----------------------------------|
| N/A         | N/A                              |

### Schedule 3 - Contract Data Sheet for Contract No: CSS/0111

|                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Condition A9 Governing Law</b>                                   | <p>Contract to be governed and construed in accordance with:<br/>(one must be chosen)</p> <p>English Law <input checked="" type="checkbox"/></p> <p>Scots Law <input type="checkbox"/> clause A9.d shall apply</p> <p>Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause A9.g (if applicable) are as follows:</p>                                                                                                                                                                                                                                                                     |
| <b>Condition A22 Termination for Convenience</b>                    | The Notice period for terminating the Contract shall be 30 (thirty) Business Days.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Condition A24 Contract Period</b>                                | <p>The Contract period for each year shall be:</p> <p>Year 1 from 1 September 2016 - 31 August 2017<br/> Year 2 from 1 September 2017 - 31 August 2018<br/> Year 3 from 1 September 2018 - 31 August 2019<br/> Year 4 from 1 September 2019 - 31 August 2020<br/> Year 5 from 1 September 2020 - 31 August 2021<br/> Option Year 6 from 1 September 2021 - 31 August 2022<br/> Option Year 7 from 1 September 2022 - 31 August 2023</p>                                                                                                                                                                                                                                                                                                                                 |
| <b>Clause B1.b.(1) Contractor's Obligations – Quality Assurance</b> | <p>Is a Deliverable Quality Plan required for this Contract?</p> <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p><b>Other Quality Assurance Requirements:</b></p> <p>AQAP 2110 Edition 3 NATO Quality Assurance Requirements for Design, Development and Production.</p> <p>Concessions shall be managed in accordance with Def Stan. 05-061 Part 1, Issue 6 - Quality Assurance Procedural Requirements - Concessions.</p> <p>Any contractor working parties shall be provided in accordance with Def Stan. 05-061 Part 4, Issue 3 - Quality Assurance Procedural Requirements - Contractor Working Parties.</p> <p>Where GQA is performed against this contract it will be in accordance with AQAP 2070 Edition B Version 3.</p> |
| <b>Condition C1 Contract Price (Excl. Vat)</b>                      | <p>All Schedule 2 line items shall be Firm Price other than those stated below:</p> <p>Line Items 1, 2, 3 Clause K5 refers</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Clause G1.a Payment</b>                                          | DEFFORM 30 Agreement refers (if applicable)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

|                                                                    |                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                    | Reference:<br><br>Date:                                                                                                                                                                                                                                                                                                                                                        |
| <b>Clause G1.c.(2) and G1.c.(3) Payment</b> (for Schedule 2 items) | Payment is to be enabled by:<br><br>Line Items 1, 2, 3 P2P Refers<br><br>Line Items N/A MOD Form 640 refers<br><br>Line Items N/A AG173 refers<br><br>(Address to which MOD Form 640 or AG173/AG210 (approval for payment) should be sent if different from Consignee):                                                                                                        |
| <b>Clause H1.a Progress Monitoring</b>                             | The Contractor shall be required to attend the following meetings:<br><br>Type: Progress Meeting<br><br>Frequency: every six (6) months<br><br>Location: either the Contractor or the Authority's premises                                                                                                                                                                     |
| <b>Clause H1.b Progress Reports</b>                                | The Contractor is required to submit the following Reports:<br><br>Type: see Schedule 12 (Information Reporting)<br><br>Frequency: Monthly<br><br>Content: see Schedule 12 (Information Reporting) (to include but not be limited to: costs incurred to date against work undertaken)<br><br>Method of Delivery: e-mail<br><br>Delivery Address: DESShipsComrcl-CSS-3b1@mod.uk |
| <b>Clause H2.b Authority's Representatives</b>                     | The Authority's Representatives for the Contract are as follows:<br><br>Commercial: Matthew Bissett<br><br>Project Manager: Boats - Mike Harris<br>RFA - Kevin Welsh<br><br>Payment:                                                                                                                                                                                           |
| <b>Clause H3.a.(3) Notices</b>                                     | Notices served under the Contract shall be sent to the following address:<br><br>Authority: Matthew Bissett<br><br>Contractor: TBI                                                                                                                                                                                                                                             |
| <b>Clause H3.a.(5) Notices</b>                                     | Notices served under the Contract can be transmitted by electronic mail:<br><br>Yes <input checked="" type="checkbox"/><br><br>No <input type="checkbox"/>                                                                                                                                                                                                                     |

|                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Condition K1 Certificate of Conformity</b>                                                                          | <p>Is a Certificate of Conformity Required for this Contract?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Line Items: 3</p> <p>If Yes does the Contractor Deliverables require Traceability throughout the supply chain?</p> <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>Line Items: N/A</p> |
| <b>Other Addresses and Other Information</b><br>(Covers forms and publications addresses and official use information) | <b>See Annex A to Schedule 3 (DEFFORM 111)</b>                                                                                                                                                                                                                                                                                                                                     |

## Appendix - Addresses and Other Information

**1. Commercial Officer**

[redacted]

Email: [redacted]

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

Boats – [redacted]

RFA – [redacted]

Email: [redacted]

**3. Packaging Design Authority**

N/A

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

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

N/A

Tel No: N/A

**(b) U.I.N.** N/A**5. Drawings/Specifications are available from**

N/A

**6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to**

(where no address is shown the mauve copy should be destroyed)

**7. Quality Assurance Representative:**

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

See B1.b.(2)

AQAPS and DEF STANs are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.dif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].**8. Public Accounting Authority**

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

☎ 44 (0) 161 233 5397

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

☎ 44 (0) 161 233 5394

**9. Consignment Instructions**

The items are to be consigned as follows:

N/A

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:**A. DSCOM.** DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JHAir Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B. JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)**11. The Invoice Paying Authority (see Note 1)**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

**Website is:**<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncliffe

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** [DESLCSLS-](mailto:DESLCSLS-)[OpsFormsandPubs@mod.uk](mailto:OpsFormsandPubs@mod.uk)**NOTES****1. Forms.** Hard copies, including MOD Form 640 are available from address in Box 12., All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.**2.\* Many DEFCONs and DEFFORMs** can be obtained from the MOD Internet Site:<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

## **Schedule 4 - Contract Change Process (i.a.w. clause A2.b) for Contract No: CSS/0111**

### **1. Authority Changes**

a. Subject always to condition A2 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.

### **2. Notice of Change**

a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with condition 3 below.

### **3. Contractor Change Proposal**

a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

b. The Contractor Change Proposal shall include:

- (1) the effect of the Change on the Contractor's obligations under the Contract;
- (2) a detailed breakdown of any costs which result from the Change;
- (3) the programme for implementing the Change;
- (4) any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
- (5) such other information as the Authority may reasonably require.

c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

### **4. Contractor Change Proposal – Process and Implementation**

a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

- (1) evaluate the Contractor Change Proposal;
- (2) where necessary, discuss with the Contractor any issues arising and, following such discussions, the Authority may modify the Authority Notice of Change and the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

- (1) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with condition A2 (Amendments to Contract); or

(2) serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.

c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with clause 4.b.(1).

## **5. Contractor Changes**

a. If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by clause 3.b, and the process at condition 4 shall apply.

**SPECIFICATION FOR PROVISION  
OF UPKEEP MANAGEMENT  
SERVICES FOR THE  
COMMERCIALLY SUPPORTED  
SHIPPING (CSS) TEAM**

**SPECIFICATION FOR UPKEEP MANAGEMENT SERVICES FOR THE COMMERCIALY  
SUPPORTED SHIPPING (CSS) TEAM**

1. The Commercially Supported Shipping (CSS) team is responsible for managing in-service and new acquisition programmes for the following vessels:
  - 1.1 Royal Fleet Auxiliary (RFA)
  - 1.2 Ice Patrol Ship
  - 1.3 Survey Vessels (Hydrographic/Oceanographic)
  - 1.4 Offshore Patrol Vessels
  - 1.5 Training Ships
  - 1.6 Small Boats Flotilla
2. The Contractor shall provide the following upkeep management services to the CSS Team on a tasking basis:
  - 2.1 Provision of overseeing services for programmed upkeeps/refits and repairs for the following vessels:
    - 2.1.1 P2000 (Archer Class) Boats - HM Ships Archer, Biter, Blazer, Charger, Dasher, Example, Exploit, Explorer, Express, Pursuer, Puncher, Raider, Ranger, Smiter, Tracker, Trumpeter
    - 2.1.2 Fast Patrol Vessels (FPV) HM Ships Sabre and Scimitar
    - 2.1.3 Training Ships HMS Bristol, Sir Tristram, Brecon and Hindostan
    - 2.1.4 Survey Boat HMS Gleaner
    - 2.1.5 Ocean Survey Ship HMS SCOTT
    - 2.1.6 Other boats, less than 50 metres in length, principally Rigid Inflatable Boats (RIBs), Work Boats, Training Yachts and Police Launches.

A detailed specification is at Appendix A to Schedule 5.
  - 2.2 Assistance to the Authority in the writing of upkeep specifications. This activity will be in relation to the vessels specified at paragraph 2.1.1 above, but may include any vessel within the CSS team. A detailed specification is at Appendix C to Schedule 5.
  - 2.3 Provision of overseeing services for Military Equipment fits on RFA vessels. A detailed specification is at Appendix B to Schedule 5.

**UPKEEP MANAGEMENT SERVICES FOR MINISTRY OF DEFENCE TRAINING BOATS,  
TRAINING SHIPS AND BOATS ONLY**

**1. REQUIREMENTS AND DELIVERABLES**

1.1. The Contractor shall provide overseeing services (as and when tasked) at the premises of the Contract Ship Repairer (CSR) or User location at any United Kingdom (UK) site or overseas, during the period of the upkeep or repair contract. Tasks and responsibilities shall include, but not be limited to, the following:

- 1.1.1. Ensuring that the CSR delivers all that is required by this contract.
- 1.1.2. Ensuring that only Essential Tasks are added to the CSR's contract.
- 1.1.3. Where the requirement changes during the course of the upkeep, additional/rebated work is properly authorised and fair and reasonable prices are agreed with the CSR, based on the rates contained in Schedule 9 (Firm Pricing (Rates)) to the Terms and Conditions

The Overseer will be issued with the following:

- A copy of the technical specification for each vessel to be overseen
  - A delegation letter defining his/her responsibilities for agreeing extra and emergent work packages (and rebates for work not carried out) on behalf of the CSS team.
- 1.1.4. Any shortcomings in the performance of the CSR are quickly identified, reported and corrected.
  - 1.1.5. Helping to ensure that the activities of Ministry Of Defence (MOD) staff connected with the upkeep are co-ordinated in a cost effective and efficient manner.
  - 1.1.6. Attending meetings in MOD Abbey Wood, Bristol with Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) Clause H2.b (Authority's Representatives) to review contract specifications for the work requiring oversight. The Overseer shall receive a briefing on the perceived risk areas of the work package and the working procedures to be followed.
  - 1.1.7. Familiarisation with all aspects of the contract which has been placed with the CSR, and understanding any MOD commitments which contribute to the success of the contract.
  - 1.1.8. Familiarisation with the CSR's premises and management organisation, and establishing a good working relationship with both the CSR and the vessel's crew.
  - 1.1.9. Monitoring (but not supervising or inspecting) the CSR's performance of the contract, ensuring that all quality and statutory requirements are being met, and ensuring that all contracted risks remain with the CSR.
  - 1.1.10. Undertaking spot audits of the CSR's safety and security arrangements.

## **APPENDIX A TO SCHEDULE 5 TO CONTRACT CSS/0111**

- 1.1.11. Advising both the CSR and the Authority's Representative in writing of any perceived shortcomings in the performance of the CSR.
  - 1.1.12. Advising the Authority's Representatives in writing of any MOD responsibility problems that are affecting the performance of the contract with the CSR.
  - 1.1.13. Co-ordinating the CSR's arrangements for conducting sea trials of the vessel with the crew's requirements.
  - 1.1.14. Liaising with third parties nominated by the Authority (including but not limited to Lloyd's Register, Maritime and Coastguard Agency)
  - 1.1.15. Witnessing nominated tests, trials and inspections including Factory, Harbour and Sea Trials.
  - 1.1.16. Seeking advice from the Authority's Representatives when uncertainty arises as regards the most appropriate response to give to the CSR. Establishing contacts with other MOD organisations which are routinely involved in upkeeps, and progressing information/equipment which the MOD is required to supply.
  - 1.1.17. Raising concerns with the CSR in writing, and ensuring that these are addressed in a timescale commensurate with the problem.
  - 1.1.18. Being pro-active in identifying and reporting ways in which MOD may improve its performance.
  - 1.1.19. Resolving any disputes in a constructive and diplomatic manner.
  - 1.1.20. Being contactable during the CSR's normal business hours throughout the course of a repair period.
  - 1.1.21. Being present at the CSR's premises on a regular basis and in support of the activities at paragraph 1.1.14 above.
  - 1.1.22. Consulting the Design Authority on issues which are outwith the original specification and have potential impact on the safety of the vessel.
  - 1.1.23. Ensuring that the vessel is ready for acceptance before allowing the CSR to declare the vessel complete.
  - 1.1.24. Ensuring that the CSR supplies all the documentation that the contract requires by each agreed date.
- 1.2. The Overseer shall be required to:
- 1.2.1. Keep the Authority's Representatives fully briefed and submit weekly reports in a format to be agreed by the Authority.
  - 1.2.2. Assess the need to make changes to the specified work and negotiate fair and reasonable prices for such changes, based on the rates and procedures contained within the CSR's contract. Ensure that the extra and emergent work budget set for the CSR's contract is not exceeded.

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- 1.2.3. Attend contract start-up and contract acceptance meetings, where requested by the Authority.

### **2. RESPONSIBILITIES FOR THE PROVISION OF FACILITIES/EQUIPMENT**

- 2.1. The Overseer shall arrange his own domestic accommodation during all tasks.
- 2.2. Facilities at the CSR will be provided, to include office accommodation (including heating, lighting, telephone and power), under contract from the MOD.
- 2.3. The Overseer must hold a valid driving license, and will also be required to provide:
- 2.3.1. A mobile phone
  - 2.3.2. Laptop computer with e-mail and printing facilities (Microsoft Word, Excel and Access)
  - 2.3.3. Camera
  - 2.3.4. Safety clothing including overalls, shoes and hard hat, etc.

### **3. PROGRAMME (UK AND OVERSEAS)**

- 3.1. The following programme provides a guide to scheduled upkeep time per vessel for Ministry of Defence Boats that may require overseeing. No guarantee can be given of the actual tasks that may be required, and the programme may change without notice.

#### **Programme for Ministry of Defence Boats**

Region 1 (East) - (Schedule 8 – Firm Pricing (Rates) – Table 1 – Region 1(East))

| Type of Vessel                      | Base Port | UK Contract Ship Repairers Location | Scheduled upkeep time per vessel                                                                                                                                             |
|-------------------------------------|-----------|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| P2000 – HMS Archer                  | Rosyth    | Newcastle                           | 4 weeks from Take-in-Hand (TIH) to Contract Acceptance Date (CAD)<br><br>Upkeeps are undertaken on an annual basis, normally between September and February in each location |
| P2000 – HMS Example                 | Gateshead |                                     |                                                                                                                                                                              |
| P2000 – HMS Explorer                | Hull      |                                     |                                                                                                                                                                              |
| P2000 – HMS Trumpeter               | Ipswich   |                                     |                                                                                                                                                                              |
| Other Boats (less than 50 metres in |           | Newcastle                           | Due to the number of boats (circa 1600 powered craft) and the wide range of classes, a                                                                                       |

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|         |  |  |                                                                                                                                         |
|---------|--|--|-----------------------------------------------------------------------------------------------------------------------------------------|
| length) |  |  | firm indication of the upkeep programme for these vessels cannot be provided. See paragraph 3.3 below for likely resource requirements. |
|---------|--|--|-----------------------------------------------------------------------------------------------------------------------------------------|

**Region 2 (West) - (Schedule 8 – Firm Pricing (Rates) – Table 2 – Region 2 (West))**

| Type of Vessel                              | Base Port | UK Ship Repairers Location     | Scheduled upkeep time per vessel                                                                                                                                                                                               |
|---------------------------------------------|-----------|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| P2000 – HMS Express                         | Penarth   | Holyhead                       | 4 weeks from Take-in-Hand (TIH) to Contract Acceptance Date (CAD)                                                                                                                                                              |
| P2000 – HMS Biter                           | Liverpool |                                | Upkeeps are undertaken on an annual basis, normally between September and February in each location                                                                                                                            |
| P2000 – HMS Charger                         |           |                                |                                                                                                                                                                                                                                |
| P2000 – HMS Tracker                         | Faslane   |                                | The exceptions are HM Ships Dasher and Pursuer. Their upkeeps are undertaken between May and July of each year.                                                                                                                |
| P2000 – HMS Raider                          |           |                                |                                                                                                                                                                                                                                |
| P2000 – HMS Pursuer                         |           |                                |                                                                                                                                                                                                                                |
| Other Boats (less than 50 metres in length) |           | Faslane, Whitehaven, Liverpool | Due to the number of boats (circa 1600 powered craft) and the wide range of classes, a firm indication of the upkeep programme for these vessels cannot be provided. See paragraph 3.3 below for likely resource requirements. |

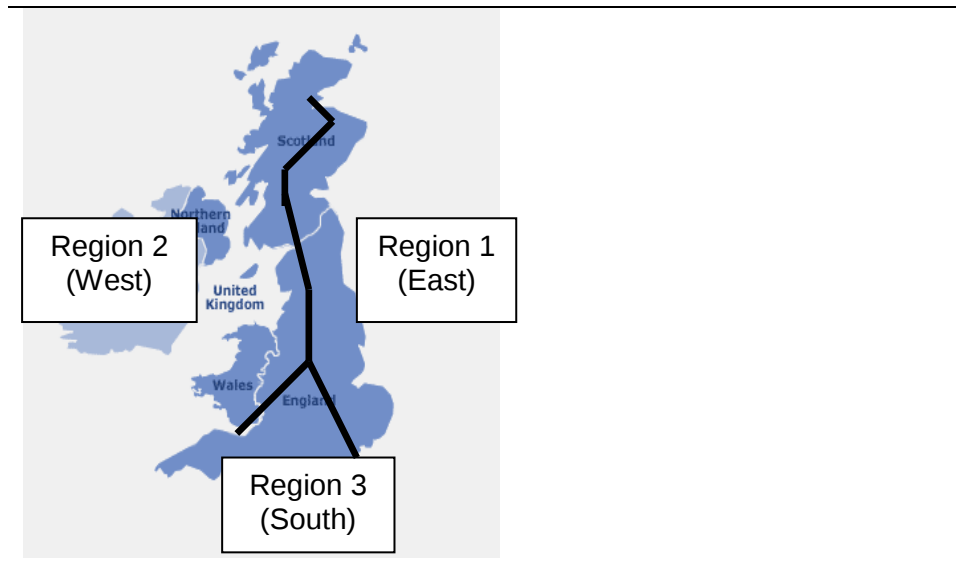
**Region 3 (South) - (Schedule 8 – Firm Pricing (Rates) – Table 3 – Region 3 (South))**

| <b>Type of Vessel</b> | <b>Base Port</b> | <b>UK Ship Repairers Location</b> | <b>Scheduled upkeep time per vessel</b>                                                             |
|-----------------------|------------------|-----------------------------------|-----------------------------------------------------------------------------------------------------|
| P2000 – HMS Blazer    | Portsmouth       | Gosport                           | 4 weeks from Take-in-Hand (TIH) to Contract Acceptance Date (CAD)                                   |
| P2000 – HMS Ranger    |                  |                                   | Upkeeps are undertaken on an annual basis, normally between September and February in each location |
| P2000 – HMS Puncher   |                  |                                   |                                                                                                     |
| P2000 –               |                  |                                   | The exceptions are HM Ships Dasher and Pursuer. Their                                               |

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| Type of Vessel                              | Base Port                 | UK Contract Ship Repairers Location             | Scheduled upkeep time per vessel                                                                                                                                                                                               |
|---------------------------------------------|---------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| HMS Smiter                                  | Devonport                 |                                                 | upkeeps are undertaken between May and July of each year.                                                                                                                                                                      |
| P2000 – HMS Dasher                          |                           |                                                 |                                                                                                                                                                                                                                |
| P2000 – HMS Exploit                         |                           |                                                 |                                                                                                                                                                                                                                |
| HMS Gleaner                                 |                           | Gosport                                         | 4 weeks from TIH to CAD<br>The upkeep of this vessel is normally programmed in the December/January period each year.                                                                                                          |
| Training Ships (TS) Tristram                | Portland                  | Gosport                                         | Tristram is a static training vessel moored in Portland.                                                                                                                                                                       |
| TS Brecon                                   | Jupiter Point - Plymouth  | Gosport                                         | This is a static training vessel moored at Jupiter Point, Plymouth.<br>Overseeing may be required in exceptional circumstances e.g. emergency repairs.                                                                         |
| TS Hindostan                                | Dartmouth                 | Dartmouth                                       | This is a static training vessel moored in Dartmouth.<br>Overseeing may be required in exceptional circumstances e.g. emergency repairs.                                                                                       |
| HMS Scott                                   | Devonport                 | Devonport                                       |                                                                                                                                                                                                                                |
| HMS Bristol                                 | Whale Island - Portsmouth | Portsmouth                                      | This is a static training vessel moored in Whale Island, Portsmouth.<br>Overseeing may be required in exceptional circumstances e.g. emergency repairs.                                                                        |
| Other Boats (less than 50 metres in length) |                           | Gosport,<br>Devonport,<br>Bristol,<br>Lymington | Due to the number of boats (circa 1600 powered craft) and the wide range of classes, a firm indication of the upkeep programme for these vessels cannot be provided. See paragraph 3.3 below for likely resource requirements. |

3.2. A map to show the 3 United Kingdom regions is shown below:



Gibraltar - (Schedule 8 – Firm Pricing (Rates) – Table 4 – Gibraltar))

| Type Vessel                       | of | Base Port | UK Ship Repairers Location | Scheduled upkeep time per vessel                                      |
|-----------------------------------|----|-----------|----------------------------|-----------------------------------------------------------------------|
| Fast Patrol Vessel – HMS Sabre    |    | Gibraltar | Gibraltar                  | 6 weeks from TIH to CAD.                                              |
| Fast Patrol Vessel – HMS Scimitar |    |           |                            | Upkeeps are normally programmed between March and September each year |

Overseas (excluding Gibraltar) - (Schedule 8 – Firm Pricing (Rates) – Table 5 – Overseas (excluding Gibraltar))

| Type Vessel                                 | of | Base Port | UK Ship Repairers Location | Scheduled upkeep time per vessel                                                                                                                                                                                               |
|---------------------------------------------|----|-----------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Other Boats (less than 50 metres in length) |    | Worldwide |                            | Due to the number of boats (circa 1600 powered craft) and the wide range of classes, a firm indication of the upkeep programme for these vessels cannot be provided. See paragraph 3.3 below for likely resource requirements. |

3.3. In addition to boats identified in the tables above, any other vessel managed by CSS may require overseeing at any time.

3.4. The Boats Framework Agreement Contracts are due for renewal in 2019, and therefore the location of CSRs post-2019 cannot be identified at present. Following re-lets of the Contract, the Authority will discuss this with the Contractor.

#### **4. PROFESSIONAL COMPETENCE**

4.1. The Overseer shall have the following qualifications and experience:

- 4.1.1. A minimum of five (5) years recent experience in the ship building or repair environment and educated to Higher National Certificate (HNC) level in a ship building/repair related topic. Alternatively, a proven track record of working in an overseeing role would be acceptable. An understanding of the requirements of the Maritime & Coastguard Agency and Classification Societies is essential.
- 4.1.2. The Overseer needs to have proven estimating and negotiating skills and a clear understanding of the meaning and implications of quality standards, such as ISO 9000, together with ability to review the CSR's performance against procedures upon which the CSR's Third Party QA assessment has been awarded.
- 4.1.3. The Overseer must be proficient in, and practised at maintaining written records of his actions, summarising discussions which take place during meetings, submitting clear and unambiguous progress reports and including his views on any aspect of the project in writing. IT literacy is essential as overseers are required to work with computer generated forms and reports.

#### **5. DEFINITIONS**

5.1. The following definitions shall apply:

- |                          |                                                                                                                                                                                                                                                                                                                          |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Refit:</b>            | A planned period of upkeep and update.                                                                                                                                                                                                                                                                                   |
| <b>Design Authority:</b> | Sections within the CSS Team whose remit is to ensure that the material state of MOD's vessels is such that they are safe to operate. These sections holds drawings of all the vessels for which they are responsible and are knowledgeable as regards equipment and their availability within the MOD's stores systems. |
| <b>Essential Tasks:</b>  | <p>That which:</p> <ul style="list-style-type: none"><li>• Affects the safe operation of a vessel/boat</li><li>• Affects the effective operation of a vessel/boat</li><li>• Can be done more cost effectively in the refit than if left until later.</li></ul>                                                           |

**SPECIFICATION WRITING: TRAINING BOATS, TRAINING SHIPS AND BOATS**

**(Schedule 8 – Firm Pricing (Rates) – Table 6 – Specification Writing)**

1. The Contractor shall be required to assist with compiling upkeep specifications for the P2000 Vessels, but may be required to assist the Authority's Representatives with compiling specifications for other vessels supported by Commercially Supported Shipping.
2. With respect to the P2000s, the Contractor will attend Work Package Reconciliation Meetings (WPRM) at the vessel's home port. At this meeting, the package of work will be agreed between MOD, 1 Patrol Boat Squadron (PBS) and Ships Staff. This package of work will include all scheduled maintenance from the Vessels Electronic Planned Maintenance System (EPMS) as well as additional work requested by Ships Staff. This work, along with the standard core specification items, will provide the information to produce the main specification.
3. The specification will be written in a previously agreed format. The final agreed specification shall be delivered to the Authority's Representatives within twenty (20) business days of the commencement of the maintenance period.
4. The specification shall be provided in both an electronic format and 5 printed copies per vessel.
5. The Specification Writer shall have the same qualifications and experience as that specified for the Overseer at paragraph 4.1.1 in Appendix A to Schedule 5.

**UPKEEP MANAGEMENT SERVICES FOR RFA VESSELS**

**1. SUMMARY OF REQUIREMENT**

- 1.1. The Overseer shall provide overseeing services of military equipment fits during Upkeep Periods.
- 1.2. The contract specification produced for each Upkeep Period includes items of 'Military Equipment' for overhaul, installation and trial. The 'Military Equipment' may include such items as: - Aviation facilities, Replenishment at Sea machinery, weapons and communications fits and supporting infrastructure.

**2. BACKGROUND**

- 2.1. The Royal Fleet Auxiliary (RFA) operates a fleet of logistic support vessels for the Royal Navy. CSS is tasked with providing both Fleet Time and Upkeep Period (UP) technical support. Upkeep Period technical support is provided by three Cluster Support Teams, each headed by a Cluster Support Team Leader (CSTL). Each team is dedicated to a particular cluster of vessels and creates contract specifications for Refit Periods (RP), Docking Periods (DP), Contractor Support Periods (CSP) and Annual Certification Periods (ACP). These Cluster teams are aligned with Cluster Contracts to provide through-life support to the RFA Flotilla. These Cluster Contracts are currently with the following Contract Ship Repairer (CSR) companies:

- 2.1.1. Cammell Laird Shiprepairers & Shipbuilders Ltd (CL) – Birkenhead, UK
- 2.1.2. A&P Group Ltd – Falmouth, UK

The Cluster Contracts are due for renewal in 2018, and therefore the location of refits post-2018 cannot be identified at present. Following re-lets of the Contract, the Authority will discuss this with the Contractor.

- 2.2. Cluster Support Teams (CST) are formed from Ministry and Industry personnel to provide through-life support package to the Flotilla. Table A and B below shows the vessels managed by each Cluster.

**Table A - RFA Liverpool - (Schedule 8 – Firm Pricing (Rates) – Table 7 – RFA Liverpool)**

| <b>Vessel</b>     | <b>Cluster 3 &amp;4<br/>(Cammell Laird )</b> | <b>Cluster 5 &amp;6<br/>(Cammell Laird)</b> |
|-------------------|----------------------------------------------|---------------------------------------------|
| RFA Wave Ruler    | X                                            |                                             |
| RFA Wave Knight   | X                                            |                                             |
| RFA Black Rover   | X                                            |                                             |
| RFA Gold Rover    | X                                            |                                             |
| RFA Fort Rosalie  |                                              | X                                           |
| RFA Fort Austin   |                                              | X                                           |
| RFA Fort Victoria |                                              | X                                           |
| RFA Diligence     | X                                            |                                             |

**Table B - RFA Falmouth - (Schedule 8 – Firm Pricing (Rates) – Table 8 – RFA Falmouth)**

| <b>Vessel</b>  | <b>Cluster 1 &amp; 2<br/>( A&amp;P Group Ltd - Falmouth)</b> |
|----------------|--------------------------------------------------------------|
| RFA Argus      | X                                                            |
| RFA Lyme Bay   | X                                                            |
| RFA Mounts Bay | X                                                            |

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| <b>Vessel</b>    | <b>Cluster 1 &amp; 2<br/>( A&amp;P Group Ltd - Falmouth)</b> |
|------------------|--------------------------------------------------------------|
| RFA Cardigan Bay | X                                                            |
| RFA Tidespring   | X                                                            |
| RFA Tiderace     | X                                                            |
| RFA Tidesurge    | X                                                            |
| RFA Tideforce    | X                                                            |

**Table C - RFA Overseas - (Schedule 8 – Firm Pricing (Rates) – Table 9 – RFA Overseas**

| Vessel            |                                  | Cluster 1 & 2<br>( A&P Group Ltd - Falmouth) |  |
|-------------------|----------------------------------|----------------------------------------------|--|
| RFA Argus         |                                  | X                                            |  |
| RFA Lyme Bay      |                                  | X                                            |  |
| RFA Mounts Bay    |                                  | X                                            |  |
| RFA Cardigan Bay  |                                  | X                                            |  |
| RFA Tidespring    |                                  | X                                            |  |
| RFA Tiderace      |                                  | X                                            |  |
| RFA Tidesurge     |                                  | X                                            |  |
| RFA Tideforce     |                                  | X                                            |  |
| Vessel            | Cluster 3 &4<br>(Cammell Laird ) | Cluster 5 &6<br>(Cammell Laird)              |  |
| RFA Wave Ruler    | X                                | X                                            |  |
| RFA Wave Knight   | X                                | X                                            |  |
| RFA Black Rover   | X                                | X                                            |  |
| RFA Gold Rover    | X                                | X                                            |  |
| RFA Fort Rosalie  | X                                | X                                            |  |
| RFA Fort Austin   | X                                | X                                            |  |
| RFA Fort Victoria | X                                | X                                            |  |
| RFA Diligence     | X                                | X                                            |  |

- 2.3. The RFA flotilla is subject to potential Upkeep Periods over a four year cycle, which is listed in Table 2 below. All RFA vessels comply with the requirements of Lloyds Register of Shipping and the Maritime Coastguard Agency. Additionally, Military Equipment is accepted by the Military Aviation Authority (MAA) for aviation facilities and Military Capability Trials and Assessment (MCTA) for weapons.

**1. List of Vessels Subject To Upkeep Periods over Four Years**

| <b>Vessel</b>     | <b>RAS</b> | <b>Flight Dk</b> | <b>CRW</b> |
|-------------------|------------|------------------|------------|
| RFA Wave Ruler    | X          | X                | X          |
| RFA Wave Knight   | X          | X                | X          |
| RFA Black Rover   |            |                  |            |
| RFA Gold Rover    | X          | X                | X          |
| RFA Fort Rosalie  | X          | X                | X          |
| RFA Fort Austin   | X          | X                | X          |
| RFA Fort Victoria | X          | X                | X          |
| RFA Diligence     | X          | X                | X          |
| RFA Argus         | X          | X                | X          |
| RFA Lyme Bay      | X          | X                | X          |
| RFA Mounts Bay    | X          | X                | X          |
| RFA Cardigan Bay  | X          | X                | X          |
| RFA Tidespring    | X          | X                | X          |
| RFA Tiderace      | X          | X                | X          |

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|               |   |   |   |
|---------------|---|---|---|
| RFA Tidesurge | X | X | X |
| RFA Tideforce | X | X | X |

RAS: Replenishment at Sea capability.

Flight Dk: Flight Deck - Aviation Facility.

CRW: Close Range Weapons Facility.

**3. TECHNICAL REQUIREMENT**

- 3.1. Where tasked by the Authority, the Contractor shall oversee the repair, overhaul, refitting and upgrading of all military equipment fits during Upkeep Periods, ensuring that the CSR complies with all relevant military and Classification regulations and standards. Deficiencies are to be brought to the attention of the Authority's Representative at the earliest opportunity.
- 3.2. The Overseer shall be fully conversant with the Military Equipment aspect of the UP specification.
- 3.3. Upkeep Periods are subject to alteration in duration, location, start and completion dates and may run concurrently. The Contractor shall manage these aspects without prejudice to the deliverables listed below.
- 3.4. The Upkeep Period contract includes a specification of work to be undertaken on the vessel. This specification of work consists of 'Standard' and material deficiency (defect) packages. The 'Standard' work package is created in house by the Cluster Support Teams from Planned Maintenance routines, Survey Cycle schedules, Alteration and Addition (A & A) and routine material defect rectification. The material deficiency (defect) package is normally produced by Ship's staff from defects that cannot be rectified during Fleet Time.
- 3.5. Vessels are subject to a Pre-Upkeep Material Assessment (PUMA) a minimum of one hundred and eighty-six (186) days before commencement of a Refit or Docking Period (but not Survey and Repair Periods (SRP)). The PUMA may be conducted at any port throughout the world and involves a thorough inspection (and in some cases testing) of all equipment and fittings. The PUMA is used to familiarise refit staff with the vessel and to capture material deficiencies for inclusion in the UP specification. Members of the PUMA group normally comprise the Cluster Support Team responsible for that vessel and other specialist personnel. The Contractor may be expected to attend the PUMA which would normally last five (5) days and may include a short sea voyage. The Contractor shall be prepared to join and leave the vessel by the most convenient method which could include sea boat or helicopter.
- 3.6. The Contractor shall provide relevant elements of the Pre Upkeep Material Assessment (PUMA) report within ten (10) business days after PUMA completion (see paragraph 4.2.2 below).
- 3.7. It is not expected that the Contractor's attendance shall be required permanently throughout each Upkeep Period. The Contractor shall be expected to have the flexibility to manage several Upkeep Periods at the same time, limiting his attendance at each to the number of days necessary to provide his required deliverables.
- 3.8. Ship familiarisation visits may be available prior to a UP, depending upon the vessel's programme. The Contractor shall liaise with the relevant Cluster Support Team Leader (CSTL) should a familiarisation visit be deemed necessary by the Contractor.

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- 3.9. Accommodation is not available on board during UP, but may be available for PUMA and familiarisation visits, subject to agreement with the vessel. The Contractor shall arrange his own accommodation during UP, and shall liaise with the relevant CSTL for accommodation during PUMA and familiarisation visits. Accommodation for PUMAs conducted outside the UK will be arranged by the CST on behalf of the Contractor. The Contractor will arrange his own accommodation for familiarisation visits and PUMAs conducted within the UK, when not available on board.
- 3.10. Transport to, from and between Upkeep Periods and familiarisation visits shall be the responsibility of the Contractor. The Contractor shall liaise with the relevant CSTL with regard to transport to and from PUMAs. The CST shall normally arrange air flights to and from PUMA visits outside the UK on behalf of the Contractor. The Contractor will be responsible for arranging transport to and from PUMAs within the UK. The Contractor shall provide transport details to the relevant CSTL in sufficient time to arrange security clearance where applicable.
- 3.11. The Contractor shall provide details of accommodation during UP, PUMAs (where applicable) and familiarisation visits to the relevant CSTL. Details are to include address and contact telephone number.
- 3.12. The Contractor shall be subject to the relevant security regulations applicable to a MOD vessel undergoing an Upkeep Period and shall comply with all relevant regulations applicable to the CSR while on site.
- 3.13. The Contractor shall provide his own working clothing, tools, protective clothing/equipment, office equipment and any other equipment necessary to discharge his duties while on site. Office space at the UP site will be made available to the Contractor during Upkeep Periods.

## **4. DELIVERABLES**

### **4.1. Draft Attendance Programme**

- 4.1.1. At approximately six (6) monthly intervals throughout the period of the Contract, the Contractor shall meet with the appropriate CSTL to agree a detailed draft attendance program appertaining to the Upkeep Periods for which the Contractor will have an involvement. The Contractor shall arrange the first meeting to take place within one month of contract placement. Following each meeting, the Contractor shall provide the appropriate CSTL with a copy of the agreed draft attendance programme. The draft attendance program will then be subject to review and amendment by the appropriate CSTL in agreement with the Contractor to produce a final program. The final program may be subject to alteration should circumstances merit revision. Alterations to the final attendance program shall only be by agreement between the appropriate CSTL and the Contractor.

### **4.2. Attendance at RFA PUMAs**

- 4.2.1. The Contractor may be required to attend a PUMA at the discretion of the appropriate CSTL
- 4.2.2. If the Contractor is required to attend a PUMA, then the following process will be followed:
  - 1. Approximately ten (10) business days before the PUMA visit, the Contractor shall be provided with the Naval Weapons section of the PUMA Portfolio and blank PUMA report template.

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2. The Contractor shall be provided with a template of the 'Ship Pre-Upkeep Naval Weapons Survey Report'. Each document shall be tailored to the vessel subject to the PUMA.
3. The Contractor may use the Naval Weapons section of the completed PUMA Portfolio as a reference during the PUMA visit.
4. From details contained in the PUMA Portfolio, observations made during the PUMA visit and using the blank PUMA report as a template, the Contractor shall produce and issue to the vessel a draft of the Naval Weapons section of the PUMA report prior to departure from the vessel.
5. The Contractor shall produce and issue to CSTL a final version of the Naval Weapons section of the PUMA report and the 'Ship Pre-Upkeep Naval Weapons Survey Report' within ten (10) business days after PUMA completion.

- 4.2.3. The Contractor shall attend and contribute to all relevant meetings during the PUMA at the discretion of the CSTL

### **4.3. Specification Review**

- 4.3.1. The Contractor shall review the Military Equipments aspect of the UP specification to check the content against the PUMA report, identifying deficiencies in the specification, and shall produce and distribute the Military Equipment Deficiencies Report in hardcopy and on disk to the relevant CSTL before the Pre-Spec Review Meeting (approximately one hundred and nineteen (119) days before contract start date).

### **4.4. Attendance at vessel familiarisation visits**

- 4.4.1. The Contractor shall be available to attend a vessel for familiarisation visits if deemed necessary by the Contractor and CSTL.
- 4.4.2. Details of the visit are to be provided to the relevant CSTL. Details are to include travel arrangements, accommodation and contact telephone number.

### **4.5. Attendance at RFA Upkeeps**

- 4.5.1. The Contractor shall monitor the progress of Equipment Fits during the Upkeep Period in respect to quality of work and timescale, and regularly advise the CSTL of deficiencies and other relevant information. The target frequency of advice is daily. However, this frequency may be reduced in agreement with the appropriate CSTL.
- 4.5.2. The Contractor shall participate in progress meetings as required by CSTL detailing progress, deficiencies and risks associated with the Military Equipment aspect of the Upkeep Period.
- 4.5.3. The Contractor shall liaise with MAA and MCTA regarding the planning and scheduling of installations trials and Harbour Acceptance Trials.
- 4.5.4. The Contractor shall participate in inspections, installation trials and HATs in agreement with CSS/CSTL/Navy Command assisting the relevant authorities in the production of reports. Deficiencies identified at these inspections, trials and HATs are to be brought to the attention of the CSTL by the Contractor. The Contractor shall assist the CSTL in pursuing the resolution of the deficiencies.

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- 4.5.5. During Upkeep Periods, the Contractor shall be available for out-of-hours telephone advice to CSTL in emergencies, and to attend the vessel should this be judged necessary by CSTL.
- 2.
- 4.5.6. The Contractor may be required to participate in safety and cleanliness rounds of the vessels and produce written reports in agreement with CSTL.
- 4.5.7. The Contractor shall surrender to the CSTL all relevant hardcopy and electronic documentation on completion of the UP and destroy all document copies whether in hardcopy or electronic format, unless otherwise agreed with the CSTL.

### **5. PROFESSIONAL REQUIREMENTS**

- 5.1. The Overseer shall, as a minimum, hold a recognised engineering apprenticeship and have recent experience in Military Equipment systems. They must be capable of understanding the technical problems and solutions which are likely to arise during the Upkeep of RFA vessels.
- 5.2. The Overseer shall be fully conversant with the appropriate military regulations and standards applicable to military equipment, and be able to understand the detail of the military equipment aspect of the Upkeep contract specification and competent to advise on their correct application.
- 5.3. The Overseer shall be able to understand the contract terms and conditions and the responsibilities and obligations which it places on both the Contract Ship Repairer (CSR) and MOD. A clear understanding of the meaning and implications of Quality Standards is required, together with the ability to review the CSR's performance against the procedures upon which the CSR's third party QA assessment has been awarded.
- 5.4. The Overseer shall be proficient in, and practised at, maintaining written records of his actions, summarising discussions which take place during meetings, drafting clear and unambiguous progress reports and putting forward his views on any aspect of the project. IT literacy is essential, as the Overseer is required to work with computer generated forms and reports.

### **6. DEFINITIONS**

- 6.1. The following definitions shall apply:

|                   |                                                                                                                                          |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A &amp; A</b>  | Alteration and Addition. A work order included in an Upkeep Period specification where change to the original equipment fit is required. |
| <b>UP</b>         | Upkeep Period. A pre-programmed maintenance period outside of Fleet Time.                                                                |
| <b>RP</b>         | Refit Period. A major Upkeep Period.                                                                                                     |
| <b>DP</b>         | Docking Period. An intermediate Upkeep Period.                                                                                           |
| <b>CSP</b>        | Contractor Support Period. A minor Upkeep Period.                                                                                        |
| <b>CSS-AV-OSM</b> | Operational Support Manager.                                                                                                             |
| <b>HAT</b>        | Harbour Acceptance Trial                                                                                                                 |
| <b>Fleet Time</b> | The operational period of a ship's through life program.                                                                                 |

## **APPENDIX C TO SCHEDULE 5 TO CONTRACT CSS/0111**

|                       |                                                                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CSTL</b>           | Cluster Support Team Leader - The leader of a combined team from Industry and MOD situated at CL/A&P Shipyards, responsible for Through Life Support of all RFA vessels.                                                                                                                                      |
| <b>PUMA</b>           | Pre-Upkeep Material Assessment. A vessel inspection period conducted by the CST team and other specialist personnel six months before a Refit or Docking Period to capture material deficiencies for inclusion into the Upkeep Period specification.                                                          |
| <b>PUMA Portfolio</b> | A questionnaire issued to the vessel in advance of the PUMA visit to be completed by ship's staff and used by the PUMA team as reference during the PUMA visit.                                                                                                                                               |
| <b>PUMA Report</b>    | A report on the material assessment of the vessel produced by the PUMA team during the PUMA visit from local observations.                                                                                                                                                                                    |
| <b>'Standard'</b>     | Name given to that aspect of the Upkeep Period work package that includes Planned Maintenance routines, Survey Cycle schedules, Alteration and Addition (A & A) and routine material deficiency (defect) rectification. Normally produced by the CSTL and CSS Capability, Safety and Design Authority (CSDA). |

**Schedule 6 - Contractor's Commercially Sensitive Information Form  
(i.a.w Condition A14)**

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 7 – Export Licence (i.a.w. clause A17.g) for Contract No: CSS/0111**

### **Condition to be included in relevant subcontracts**

#### **Export Licence**

1. In this Condition the following words and expressions shall have the meanings set respectively against them:

- a. “Agreement” means this subcontract;
- b. “Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
- c. “Contract” means Contract No [insert MOD Contract No] between the Authority and the Contractor;
- d. “Contractor” means [insert name of prime contractor];
- e. “First Party” means [insert name of purchaser];
- f. “Second Party” means [insert name of supplier].

2. In this Condition, “foreign” and “Overseas” shall be understood from the position of the Authority and be regarded as “non-UK”.

3. The Second Party shall notify the First Party promptly if the Second Party becomes aware that all or part of any article or service (including information and software) to be delivered under the Agreement is or will be subject to a non-UK export licence, authorisation or exemption or any other related transfer control that imposes or will impose end use, end user, re-export or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon nationality, affecting the Authority, the Contractor or both. This does not include the Intellectual Property-specific restrictions of the type referred to in condition D1 (Third Party Intellectual Property – Rights and Restrictions) of the First Party’s Conditions of Contract.

4. If requested by the First Party, the Second Party shall give the First Party a summary of every existing or expected licence and restriction referred to in clause 3 and any related obligation or restriction to the extent that they place an obligation or restriction upon the First Party or the Authority with which the First Party or the Authority must comply, including to the extent applicable to such obligations or restrictions:

- a. the exporting nation, including the export licence number (where known);
- b. the article or service (including software and Information) affected;
- c. the nature of the restriction and obligation;
- d. the authorised end use and end users and other parties;
- e. any specific restrictions on access by third parties, or by individuals based upon their nationality, to the articles or to anything Delivered or used in the performance or fulfilment of the services; and
- f. any specific restrictions on re-transfer or re-export of the articles or of anything Delivered or used in the performance or fulfilment of the services.

The Second Party shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the First Party or the Authority must comply.

5. When an export licence is required from a foreign government for the performance of the Agreement, the Second Party shall promptly consult with the First Party on the licence requirements and, where the

Second Party is the applicant for the licence:

a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be Delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:

(1) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and

(2) the end use as: For the Purposes of HM Government;

b. include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the [insert name of the Contractor] and the Ministry of Defence of the United Kingdom";

c. include in the submission the information that the First Party (and any intermediary parties in the supply chain, as applicable) and the Contractor will be recipients and users of the items, including information, for the performance of the Contract.

6. If the information required under clauses 3 and 4 has been provided previously to the First Party by the Second Party, the Second Party may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clauses 3 and 4.

7. If the Second Party becomes aware of any changes in the information notified previously under clause 3, 4 or 6 that would affect the Contractor's or the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Second Party shall notify the First Party promptly of the change.

8. If the Second Party or any subcontractor in the performance of the Agreement needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Second Party or that subcontractor. The First Party will liaise with his purchaser to enable the Authority to provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regards to any defence or security issue that may arise.

9. Where the Agreement performance requires the export of items for which a foreign export licence is required, the Second Party shall include the dependencies for the export licence application, grant and maintenance in the Agreement risk register and in the risk management plan for the Agreement, with appropriate review points. Where there is no requirement under the Agreement for a risk management plan the Second Party shall submit an Export Licence Plan for agreement with the First Party.

10. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request that is transmitted to the Second Party by the First Party, the Second Party shall, or procure that the Second Party's subcontractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no such objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority. The First Party shall provide information, certification and other documentation necessary to support the application for the requested variation that it has received. A fair and reasonable charge for this service based on the cost of providing it will be borne by the Authority.

11. Where the Second Party subcontracts work under the Agreement, which is likely to be subject to foreign export control, the Second Party shall use reasonable endeavours to incorporate in each subcontract the same terms as set out in these clauses 1 - 14. Where it is not practicable to include these said terms, the Second Party shall report that fact and the circumstances to the First Party.

12. Where the First Party provides materiel (information and items, including software) to enable the Second Party to perform the Agreement, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in clause 3:

a. the First Party may, or at the request of the Second Party, undertake to, give the Second Party a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Second Party's ability to perform the Agreement including, to the extent applicable to the Second Party's performance of the Agreement:

- (1) the exporting nation, including the export licence number (where known);
- (2) the items or information affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
- (6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.

b. This will not include Intellectual Property specific restrictions of the type mentioned in condition D1 (Third Party Intellectual Property – Rights and Restrictions) in relation to the First Party's Conditions of Contract instead of the Contractor.

c. The Second Party and its subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the First Party.

d. The Second Party shall notify the First Party immediately if it is unable for whatever reason to abide by any restriction advised by the First Party to the Second Party under clause 12.

13. Where restrictions are advised by the First Party to the Second Party under clause 12, the First Party and the Second Party shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Agreement by the Second Party, then the First Party shall consult with the Second Party on alternative solutions and the terms of the Agreement shall be amended to give effect to the agreed solution. If no alternative solution satisfying the essential terms of the Agreement is agreed by the Parties then the First Party shall have the right to terminate the Agreement. Termination under these circumstances will be in accordance with the principles of condition A22 (Termination for Convenience) of the First Party's Conditions of Contract.

14. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority has undertaken to provide the Second Party with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Agreement.

**Schedule 8 – Firm Pricing (Rates)**

**(TO BE INSERTED AT CONTRACT AWARD)**

## Schedule 9 – List of Authorised Demanders

[illegible]

**OFFICIAL-SENSITIVE-COMMERCIAL (when completed)**  
**CONTRACT CSS/0111 - TASK AUTHORISATION FORM**

|                 |  |
|-----------------|--|
| <b>Task No:</b> |  |
|-----------------|--|

**Schedule 10 – Tasking Form**

PART 1 (To be completed by Authority's Representative and forwarded to: 'TBD'):

|                                |  |
|--------------------------------|--|
| <b>Task No:</b>                |  |
| <b>Task Description:</b>       |  |
| <b>Start Date:</b>             |  |
| <b>End Date:</b>               |  |
| <b>Contract Ship Repairer:</b> |  |
| <b>Type of Upkeep Period:</b>  |  |
| <b>Additional Information:</b> |  |

In accordance with the Terms and Conditions of Contract CSS/0111, you are requested to provide a quotation at Part 2 of this TAF and return to the Authority's Representative.

**I confirm that I am an Authorised Demander i.a.w. Schedule 9 to CSS/0111**

|                                         |  |
|-----------------------------------------|--|
| <b>Authority's Representative Name:</b> |  |
| <b>Post Title:</b>                      |  |
| <b>Telephone No:</b>                    |  |
| <b>Signature:</b>                       |  |
| <b>Date:</b>                            |  |

**OFFICIAL-SENSITIVE-COMMERCIAL (when completed)**

**OFFICIAL-SENSITIVE-COMMERCIAL (when completed)**

**CONTRACT CSS/0111 - TASK AUTHORISATION FORM**

|                 |  |
|-----------------|--|
| <b>Task No:</b> |  |
|-----------------|--|

PART 2 - QUOTE (To be completed by Contractor)

(Region 1 (East) / Region 2 (West) / Region 3 (South) / Gibraltar / Overseas (excluding Gibraltar) / Specification Writing / RFA (Liverpool) / RFA Falmouth / RFA (Overseas)) (**delete as appropriate**)

| Item No                   | Item                                                                 | No of Hours / Rate / miles | Firm Rate | Total (£ ex VAT) |
|---------------------------|----------------------------------------------------------------------|----------------------------|-----------|------------------|
| 1.1                       | Upkeep Management Labour rate                                        |                            |           |                  |
| 1.1                       | Specification Writing rate                                           |                            |           |                  |
| 2.1                       | Overnight Subsistence (Overseas) (£ per night)                       |                            |           |                  |
| 2.2                       | Day Subsistence (UK) (5-10 hours away from office) (£ per day)       |                            |           |                  |
| 2.3                       | Day Subsistence (UK) (>10 hours away from office) (£ per day)        |                            |           |                  |
| 2.4                       | Day Subsistence (Overseas) (5-10 hours away from office) (£ per day) |                            |           |                  |
| 2.5                       | Day Subsistence (Overseas) (>10 hours away from office) (£ per day)  |                            |           |                  |
| 2.6                       | Car Hire (UK) - Rental (£ per day)                                   |                            |           |                  |
| 2.7                       | Car Hire (UK) - Fuel (£ per mile)                                    |                            |           |                  |
| 2.8                       | Car Hire (Overseas) - Rental (£ per day)                             |                            |           |                  |
| 2.9                       | Car Hire (Overseas) - Fuel (£ per mile)                              |                            |           |                  |
| 2.10                      | Private Car – Fuel (£ per mile)                                      |                            |           |                  |
| 2.11                      | Rail                                                                 |                            |           |                  |
| 2.12                      | Flights                                                              |                            |           |                  |
| <b>Total (Firm Price)</b> |                                                                      |                            |           |                  |

c. Name of overseer to be supplied .....

Signed: ..... Date: .....

Name: ..... Title: .....

**OFFICIAL-SENSITIVE-COMMERCIAL (when completed)**

CONTRACT CSS/0111 - TASK AUTHORISATION FORM

|          |  |
|----------|--|
| Task No: |  |
|----------|--|

PART 3 - APPROVAL TO PROCEED

I hereby confirm acceptance of the Limit of Liability quoted at Part 2 to complete the task and authorise the Contractor to proceed.

Name: ..... Date: .....  
**Authorised Demander**

Signed: .....

Name: ..... Date :.....  
**Finance Officer**

Signed: .....

Name: ..... Date: .....  
**Commercial Officer**

Signed: .....

**OFFICIAL-SENSITIVE-COMMERCIAL (when completed)**

**CONTRACT CSS/0111 - TASK AUTHORISATION FORM**

|                 |  |
|-----------------|--|
| <b>Task No:</b> |  |
|-----------------|--|

PART 4 - FINAL PRICE (To be completed by Contractor)

(Region 1 (East) / Region 2 (West) / Region 3 (South) / Gibraltar / Overseas (excluding Gibraltar) / Specification Writing / RFA (Liverpool) / RFA Falmouth / RFA (Overseas)) (**delete as appropriate**)

| Item No                   | Item                                                                 | No of Hours / Rate / miles | Firm Rate | Total (£ ex VAT) |
|---------------------------|----------------------------------------------------------------------|----------------------------|-----------|------------------|
| 1.1                       | Upkeep Management Labour rate                                        |                            |           |                  |
| 1.1                       | Specification Writing rate                                           |                            |           |                  |
| 2.1                       | Overnight Subsistence (Overseas) (£ per night)                       |                            |           |                  |
| 2.2                       | Day Subsistence (UK) (5-10 hours away from office) (£ per day)       |                            |           |                  |
| 2.3                       | Day Subsistence (UK) (>10 hours away from office) (£ per day)        |                            |           |                  |
| 2.4                       | Day Subsistence (Overseas) (5-10 hours away from office) (£ per day) |                            |           |                  |
| 2.5                       | Day Subsistence (Overseas) (>10 hours away from office) (£ per day)  |                            |           |                  |
| 2.6                       | Car Hire (UK) - Rental (£ per day)                                   |                            |           |                  |
| 2.7                       | Car Hire (UK) - Fuel (£ per mile)                                    |                            |           |                  |
| 2.8                       | Car Hire (Overseas) - Rental (£ per day)                             |                            |           |                  |
| 2.9                       | Car Hire (Overseas) - Fuel (£ per mile)                              |                            |           |                  |
| 2.10                      | Private Car – Fuel (£ per mile)                                      |                            |           |                  |
| 2.11                      | Rail                                                                 |                            |           |                  |
| 2.12                      | Flights                                                              |                            |           |                  |
| <b>Total (Firm Price)</b> |                                                                      |                            |           |                  |

c. Name of overseer supplied .....

**OFFICIAL-SENSITIVE-COMMERCIAL (when completed)**

OFFICIAL-SENSITIVE-COMMERCIAL (when completed)

CONTRACT CSS/0111 - TASK AUTHORISATION FORM

|          |  |
|----------|--|
| Task No: |  |
|----------|--|

PART 5 – ACCEPTANCE APPROVAL

I hereby confirm my acceptance of the Firm price at Part 4 for the completed task and authorise payment on P2P.

Name: ..... Date: .....  
**Authorised Demander**

Signed: .....

Name: ..... Date: .....  
**Finance Officer**

Signed: .....

Name: ..... Date: .....  
**Commercial Officer**

Signed: .....

**Employee's Acknowledgement to Employer of Obligations Relating to Confidentiality**

Employee:

Name of Employer:

MOD Contract/Task No:

Title:

1. I, the above named employee, confirm that I am fully aware that, as part of my duties with my Employer in performing the above Contract, I shall receive confidential information of a sensitive nature (which may include particularly commercially sensitive information), whether documentary, electronic, aural or in any other form, belonging to or controlled by the Secretary of State for Defence or third parties. I may also become aware, as a result of my work in connection with the Contract, of other information concerning the business of the Secretary of State for Defence or third parties, which is by its nature confidential.
2. I am aware that I should not use or copy for purposes other than assisting my Employer in carrying out the Contract, or disclose to any person not authorised to receive the same, any information mentioned in paragraph 1 unless my Employer (whether through me or by alternative means) has obtained the consent of the Secretary of State. I understand that "disclose", in this context, includes informing other employees of my Employer who are not entitled to receive the information.
3. Unless otherwise instructed by my Employer, if I have in the course of my employment received documents, software or other materials from the Secretary of State or other third party for the purposes of my duties under the above Contract then I shall promptly return them to the Secretary of State or third party (as the case may be) at the completion of the Contract via a representative of my Employer who is an authorised point of contact under the Contract and (in the case of information referred to under paragraph 1 above) is also authorised under paragraph 2. Alternatively, at the option of the Secretary of State for Defence or the third party concerned, I shall arrange for their proper destruction and

notify the above authorised point of contact under the Contract to supply a certificate of destruction to the Secretary of State. Where my Employer may legitimately retain materials to which this paragraph applies after the end of the Contract, I shall notify the authorised representative of my Employer to ensure that they are stored and access is controlled in accordance with my Employer's rules concerning third party confidential information.

4. I understand that any failure on my part to adhere to my obligations in respect of confidentiality may render me subject to disciplinary measures under the terms of my employment.

Signed:

Date:

## **Schedule 12 – Information Reporting**

Schedule 12 - Information Reporting is contained within the following spreadsheet attached to this document.

## **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

### **PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY**

#### **1 DEFINITIONS**

1.1 In this Schedule 13 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 13 Part 1 unless the context otherwise requires:

**"DPA"** means Data Protection Act 1998 as amended or replaced from time to time;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority Employee, a Previous Contractor Employee or an Unexpected Employee;

**"New Provider"** means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

**"Previous Contractor"** means [redacted];

**"Previous Contractor Employee"** means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

**"Relevant Transfer"** means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

**"Relevant Transfer Date"** means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

**"Relevant Statutory Scheme"** has the same meaning as in Regulation 8 of the Transfer Regulations;

**"Services"** shall have the meaning specified in [project team to complete];

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

#### **2 PREVIOUS CONTRACTOR EMPLOYEES**

##### **2.1 Employee Information**

2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 13 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the DPA and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

#### **2.2 Obligations in respect of Previous Contractor Employees**

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

#### **2.3 Indemnities**

- 2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:
- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
  - (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and

- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
- (d) Any variations or proposed variations to any Previous Contractor Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

### **3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL**

#### **3.1 Contractor Indemnity**

- 3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

#### **3.2 Post Transfer Reporting**

- 3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:
  - (a) any proposed, agreed or imposed changes to terms and conditions of service;
  - (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
  - (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
  - (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
  - (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

## Schedule 13 - Transfer of Undertakings (Protection of Employment)

### Appendix 1

#### PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

##### PART A

1. Pursuant to paragraph 2.1.1 of this Schedule 13 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

1.2 **Performance Appraisal**

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

#### **1.4 Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

#### **1.5 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

#### **1.6 Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

## **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

### **Part B**

1.6 Information to be provided 28 days prior to the Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

## **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

### **PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT**

#### **1. DEFINITIONS**

1.1 In this Schedule 13 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 13 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 13 Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule [X], Part 1, in this Schedule 13 Part 2 unless the context otherwise requires:

**"Employee Liability Information"** has the same meaning as in Regulation 11(2) of the Transfer Regulations;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

**"Subsequent Relevant Transfer"** means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

**"Subsequent Transfer Date"** means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

**"Subsequent Transferring Employee"** means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate .

#### **2. EMPLOYMENT**

##### **2.1 Information on Re-tender, Partial Termination, Termination or Expiry**

2.1.1 No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 13 Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
  - (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
  - (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
  - (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 13 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
  - (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
  - (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule 13 (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the DPA and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.
- 2.1.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.5 of this Schedule 13 Part 2.

- 2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 13 Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

#### **2.2 Obligations in Respect of Subsequent Transferring Employees**

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:
- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

#### **2.3 Unexpected Subsequent Transferring Employees**

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
  - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
  - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
  - (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
    - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
    - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
    - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
  - (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
  - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
  - (vi) legal and other professional costs reasonably incurred;

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

- 2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

#### **2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

- 2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

- 2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

- 2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

#### **2.5 Contracts (Rights of Third Parties) Act 1999**

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

- 2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.6 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

#### **2.6 General**

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 13 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

## Schedule 13 - Transfer of Undertakings (Protection of Employment)

### Appendix 1

#### CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Schedule 13, the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
  - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
  - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership;
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT**

**Part A**

1. Pursuant to paragraph 2.1.2 of this Schedule 13, part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

**1.1 Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

**1.2 Performance Appraisal**

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

**1.3 Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;

### **Schedule 13 - Transfer of Undertakings (Protection of Employment)**

- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

#### **1.4 Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

#### **1.5 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

#### **1.6 Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

### **Part B**

#### **1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:**

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

**Schedule 14 - Integrated Project Management Plan (IPMP)**

**(TO BE INSERTED AT CONTRACT AWARD)**