



Ministry
of Defence

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Our Reference: 701547382

Date: 13 August 2021

Dear Sir/Madam,

Invitation To: Tender (ITT) Reference Number: 701547382- The Procurement of HAAIP Cooling Fans

1. You are invited to tender for The Procurement of HAAIP Cooling Fans in accordance with the attached documentation.
2. The requirement is for the provision of provision of 294 sets of Main Engine cooling fans for the Heavy Armoured Improvement Programme (HAAIP) for use on multiple Heavy Armoured Platforms, as detailed within this documentation set.
3. The anticipated date for the contract award decision is 25th October 2021, please note that this is an indicative date and may change.
4. You must submit your Tender to the Defence Sourcing Portal (DSP) by **10:00 on 20th September 2021.**

Yours faithfully

Beth Monis

Senior Commercial Manager 1
Land Equipment Vehicle Support Team

Invited Suppliers

| Supplier Name | Supplier Address | Contact Name | Contact Email |
|--|---|--------------------|--|
| AMETEK AIRTECHNOLOGY GROUP LIMITED | 111 WINDMILL ROAD SUNBURY-ON- THAMES GB TW16 7EF | PAMELA MURRISON | pamela.murrison@ametek.com |
| GALLAY LIMITED | 9-12 PATERSON ROAD WELLINGBOROUGH NORTHAMPTONSHIRE NN84BZ | MICHAEL LEDLIE | michael.ledlie@gallay.co.uk |

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Terms and Conditions

DEFFORM 47

Contents

This Invitation to Tender sets out the requirements that Tenderers must meet to submit a valid Tender. It also contains the draft Contract, further related documents and forms and sets out the Authority's position with respect to the competition.

This invitation consists of the following documentation:

- DEFFORM 47 – Invitation To Tender. The DEFFORM 47 sets out the key requirements that Tenderers must meet to submit a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:

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| ▪Section B – Key Tendering Activities | Page 8 |
| ▪Section C – Instructions on Preparing Tenders | Page 10 |
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| ▪Section E – Instructions on Submitting Tenders | Page 12 |
| ▪Section F – Conditions of Tendering | Page 14 |
| ▪DEFFORM 47 Annex A – Tender Submission Document (Offer) | Page A1 |
- Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations
- Contract Documents (As per the contents table in the Terms and Conditions)
- Terms & Conditions which includes the Schedule of Requirements and any addition Schedules, Annexes and/or Appendices.
- DEFFORM 111 – Appendix to Contract - Addresses and Other Information
- DEFFORM 539A – Tenderer's Commercially Sensitive Information Form (or SC1B Schedule 4 or SC2 Schedule 5)
- Any other relevant documentation:
 - Annex A – The Statement of Requirements (SOR)
 - Appendix 1 to Annex A – Delivery Schedule
 - Appendix 2 to Annex A – Technical Specification
 - Appendix 3 to Annex A – Key Deliverables
 - Annex B – Tender Evaluation Spreadsheet
 - Annex C – Key Performance Indicators (KPIs)
 - Annex D – Performance Measurement Annex
 - Annex E – DEFFORM 315
 - Annex F – DEFFORM 316
 - Annex G – Security Aspects Letter (SAL)
 - Annex H – GFA Record
 - Annex I – DEFFORM 129J

Section A – Introduction

DEFFORM 47 Definitions

In this ITT the following words and expressions shall have the meanings given to them below:

A1. “The Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown.

A2. “Compliance Regime” is a legally enforceable set of rules, procedures, physical barriers and controls that, together, act to prevent the flow of sensitive or protected information to parties to whom it may give an unfair advantage.

A3. “Conditions of Tendering” means the conditions set out in this DEFFORM 47 that govern the competition.

A4. A “Consortium Arrangement” means two or more economic operators who have come together specifically for the purpose of bidding for this Contract and who establish a consortium agreement or special purpose vehicle to contract with the Authority.

A5. “Contract” means a Contract entered into between the successful Tenderer or consortium members and the Authority, should the Authority award a Contract as a result of this competition.

A6. “Contract Terms & Conditions” means the attached conditions including any schedules, annexes and appendices that will govern the Contract entered into between the successful Tenderer and the Authority, should the Authority award a Contract as a result of this competition.

A7. “Contractor Deliverables” means the works, goods and/or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance (QA) requirements if specified) which the Contractor is required to provide under the Contract.

A8. “Cyber Security Model” means the model defined in DEFCON 658.

A9. “Government Furnished Information” means information or data issued or made available to the Tenderer in connection with the Contract by or on behalf of the Authority.

A10. “ITT Documentation” means this ITT and any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access by the Authority, for the purposes of responding to this ITT.

A11. “ITT Material” means any other material (including patterns and samples), equipment or software, in any medium or form issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT.

A12. “Schedule of Requirements” (Section 1 in Terms and Conditions, Schedule 2 in Standardised Contracting Template 1B (SC1B) or Schedule 2 in Standardised Contracting Template 2 (SC2)) means that part of the Contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.

A13. The “Statement of Requirement” Annex A to the ITT means that part of the Contract which details the technical requirements and acceptance criteria of the Contractor Deliverables.

A14. A ‘Sub-Contractor’ means any party engaged or intended to be engaged by the Contractor at any level of sub-contracting to provide Contractor Deliverables for the purpose of performing this Contract.

A15. A “Sub-Contracting Arrangement” means a group of economic operators who have come together specifically for the purpose of bidding for this Contract, where one of their number will be the party to the Contract with the Authority, the remaining members of that group being Sub-Contractors to the lead economic operator.

A16. A “Tender” is the offer that you are making to the Authority.

A17. “Tenderer” means the economic operator submitting a response to this Invitation to Tender. Where “you” is used this means an action on you the Tenderer.

A18. A “Third Party” is any person (including a natural person, corporate or unincorporated body (whether or not having separate legal personality)), other than the Authority, the Tenderer or their respective employees.

A19. A “Virtual Tender Board” means the electronic platform to which Tenders are submitted to the Authority. Tenderers are provided log in details within one week of this ITT.

Purpose

A20. The purpose of this ITT is to invite you to submit a Tender, in accordance with the instructions set out in this ITT, to propose a solution and best price to meet the Authority's requirement. This documentation explains and sets out the:

- a. timetable for the next stages of the procurement;
- b. instructions, conditions and processes that governs this competition;
- c. information you must include in your Tender and the required format;
- d. administrative arrangements for the receipt and evaluation of Tenders;
- e. criteria and methodology for the evaluation of Tenders; and
- f. Contract Terms & Conditions

A21. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

A22. This Requirement was Advertised (Publication: DSP; Publication Date: 26-04-21) under the following reference 701547382.

A23. This procurement is In accordance with Defence and Security Public Contracts Regulations 2011.

A24. This ITT has been issued to all potential Tenders chosen during the Tender selection stage listed on page 2 of this DEFFORM 47.

A25. Potential Tenderers can be found on the Contract Bidders Notice as advertised on the Defence Contracts Online (DCO).

A26. Funding has been approved on 29/07/2021

ITT Documentation and ITT Material

A27. ITT Documentation, ITT Material and any Intellectual Property Rights (IPR) in them shall remain the property of the Authority or other Third-Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
- b. not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
- d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A27.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
- e. accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;
- f. inform the named Commercial Officer if you decide not to submit a Tender;
- g. immediately confirm destruction of (or in the case of software, that it is beyond use) all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
- h. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.

A28. Some or all of the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A27 above.

Tender Expenses

A29. You will bear all costs associated with preparing and submitting your Tender. The Authority will not be liable for the costs of any Tender, work or effort incurred by you participating in this tender process, including where the tender process is terminated or amended by the Authority, where the Authority decides not to award a Contract or where you

withdraw from the tender process either directly or indirectly as costs under any other Contract with the Authority.

Consortia and Sub-Contracting Arrangements

A30. The Authority requires all Tenderers to identify whether any and/or which Consortium Arrangements or Sub-Contracting Arrangements will apply in the case of their Tender, and in particular specify the Consortium Arrangement or Sub-Contracting Arrangement entity or both and their workshare. In the case of a Sub-Contracting Arrangement, the Authority requires all Tenderers to identify the entity that will be the party to the Contract with the Authority.

Material Change of Control

A31. You must inform the Authority in writing as soon as you become aware of:

- a. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of your PQQ response or in connection with the submission of your PQQ response;
- b. any material adverse change in your circumstances which may affect the truth, completeness or accuracy of any information provided as part of your PQQ response or in connection with the submission of your PQQ response or in your financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member; or
- c. any material changes to your financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; and
- d. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:
 - i. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured;
 - ii. the identity of Consortium Arrangement or Sub-Contracting Arrangement;
 - iii. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and
 - iv. any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.

A32. If a change described in paragraph A31 occurs, the Authority may reassess you against the PQQ selection criteria. The Authority reserves the right to require you to submit an updated/amended PQQ response (or parts thereof) to reflect the revised circumstances so that the Authority can make a further assessment by applying the published selection criteria to the new information provided. The outcome of this further assessment may affect your suitability to proceed with the procurement.

A33. In relation to a change described in paragraph A31, as far as is reasonably practicable, you must discuss any such proposed changes with the Authority before they occur and you must additionally highlight any changes from your PQQ response relating to any change in the Consortium Arrangement or Sub-Contracting Arrangement or any change relating to conflicts of interest following a change, directly or indirectly in your ownership or control or of any

Consortium Arrangement or Sub-Contracting Arrangement

A34. The Authority reserves the right, at its sole discretion to disqualify any Tenderer who makes any material change to any aspects of its responses to the PQQ if:

- a. it fails to re-submit to the Authority the updated relevant section of its PQQ response providing details of such change in accordance with paragraph A33 as soon as is reasonably practicable and in any event no later than 30 Business Days following request from the Authority; or
- b. having notified the Authority of such change, the Authority considers that the effect of the change is such that on the basis of the evaluation undertaken by the Authority for the purpose of selecting potential providers to participate in the procurement, the Tenderer would not have pre-qualified.

Contract Terms & Conditions

A35. The Contract Terms & Conditions include all attachments listed in the contents of the Terms & Conditions, such as the Schedule of Requirements, any additional Schedules, Annexes and/or Appendices. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the [Knowledge in Defence \(KiD\) website](#).

A36. The Contract Terms & Conditions are attached.

Other Information

A37. The Armed Forces Covenant

- a. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives, as a result of their service.
- b. The Covenant is based on two principles:
 - i. That the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
 - ii. That special consideration is appropriate in some cases, especially for those who have given most, such as the injured and the bereaved.

The Authority encourages all Tenderers, and their suppliers, to sign the Armed Forces Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.

- c. The Armed Forces Covenant provides guidance on the various ways you can demonstrate your support through your Covenant pledges and how by engaging with the Covenant and Armed Forces, such as employing Reservists, a company or organisation can also see real benefits in their business.
- d. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the Authority can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: employerrelations@rfca.mod.uk

Address: Defence Relationship Management
Ministry of Defence
Holderness House
51-61 Clifton Street
London
EC2A 4EY

e. Paragraph A37 a to d above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation, Contract want to provide your support.

A38. Not Applicable.

Section B - Key Tendering Activities

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

| Stage | Date and Time | Initiated By | Submit to: |
|--|-----------------------------------|---------------------|-------------------------|
| Invitation to Tenderers' Conference | N/A | The Authority | All Tenderers |
| Date for Confirmation of attendance at Tenderers' Conference | N/A | Tenderers | N/A |
| Final date for Clarification Questions / Requests for additional information | 12:00 on 6-September-2021 | Tenderers | Defence Sourcing Portal |
| The Authority issues Final Clarification Answers | 16:00 on 13-September-2021 | The Authority | All Tenderers |
| Tender Return | 10:00 on 20-September-2021 | Tenderers | Defence Sourcing Portal |
| Tender Evaluation | 6-October-2021 | The Authority | N/A |
| Negotiations | N/A | The Authority | N/A |
| Reverse Auction | N/A | The Authority | N/A |
| Trials / Testing | N/A | The Authority | N/A |

Notes**Tenderers Conference**

B1. A Tenderers Conference is not being held.

Clarification Questions

B2. The Authority will automatically copy clarification questions and answers to all Tenderers, removing the names of those who have raised the clarification questions. If you wish the Authority to treat the clarification as confidential and not issue the response to all Tenderers, you must state this when submitting the clarification question and provide justification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Tenderer, who will have an opportunity to withdraw the question. If the clarification question is not withdrawn, the response will be issued to all Tenderers.

Tender Return

B3. The Authority may, in its own absolute discretion extend the deadline for receipt of tenders and in such circumstances the Authority will notify all Tenderers of any change.

Negotiations

B4. Negotiations do not apply to this tender process.

Section C - Instructions on Preparing Tenders

Construction of Tenders

C1. Your Tender must be written in English, using Arial font size 11. Prices must be in GBP. Prices must be Firm for Contract Years 1-3 and Variation of Price (VOP) from Contract Years 4 until Contract Expiry (See Conditions 45.7 and 45.8). A price breakdown must be included in the Tender.

C2. To assist the Authority's evaluation, you must set out your Tender response in accordance with Section D (Tender Evaluation).

Validity

C3. Your Tender must be valid and open for acceptance for 90 calendar days from the Tender return date. In addition, the winning Tender must be open for acceptance for a further thirty (30) calendar days once the Authority announces its decision to award the Contract. In the event that legal proceedings challenging the award of the Contract are instituted, before entry into Contract, you must hold your Tender open for acceptance during this period, and for up to fourteen (14) calendar days after any legal proceedings have concluded.

Section D - Tender Evaluation

D1. This section and Annex B (Tender Evaluation Spreadsheet) detail how your Tender will be evaluated, the tools used to evaluate the Tender and the evaluation criteria.

D2. Negotiations do not apply to this tender process.

Definitions

D3. “We” or “Authority” means the Ministry of Defence.

D4. “You” or “Your” or the “Potential Tenderers” means the business or company which is completing this Tender Evaluation.

General Notes

D5. Please ensure you submit your Tender Response through the Defence Sourcing Portal (DSP), accessed [\[here\]](#). Please ensure that you submit your bid **no later than the deadline stipulated in the DSP and DEFFORM 47 Section B - Key Tendering Activities**.

D6. You are **not** required to provide a hard copy of your Tender bid.

D7. You are encouraged to seek clarification from the Authority If you have any queries regarding this opportunity. All queries should be raised using the messaging function within the DSP. Please be aware that communication not received via the portal might not be considered by the Authority.

D8. The Authority reserves the right to ask to see supporting documents at any time during the procurement process. You may also be asked to clarify your answers or provide more details about certain issues.

D9. Potential Tenderers should note that the portal will automatically close at the time and date stated in DEFFORM 47 Section B - Key Tendering Activities, and as such the Authority will not be able to consider a late submission in most cases. You are encouraged to submit your bid with sufficient time in advance of the deadline.

Scoring Overview

D10. The Authority shall evaluate all Tenders for this opportunity in accordance with the “Most Economically Advantageous Tender” (MEAT). Which will evaluate a combination of Cost and Quality / non-cost criteria.

D11. The specific MEAT Evaluation Methodology being adopted for this opportunity is the “Value for Money Index”. This is an absolute evaluation method that divides the total score of the non-cost (quality) criteria by the tender cost. It ranks tenders on the quality (represented by the non-cost score) for each £ (or £k or £m) of cost.

D12. The table below provides a summary of each question envelope in the DSP and how they are scored.

Table 1 - MEAT Scoring Summary

| DSP Envelope | <u>Qualification Envelope</u> | <u>Technical Envelope</u> | <u>Commercial Envelope</u> |
|-----------------------------------|---|---|--|
| Scoring Element(s) | <ul style="list-style-type: none"> Qualification questions relevant to the procurement | Non-Cost Score <ul style="list-style-type: none"> Technical (Quality) questions Social Value questions Commercial questions | Cost Score <ul style="list-style-type: none"> Cost of overall bid Any additional questions relevant to cost |
| Question Type/Scoring Methodology | All questions PASS/FAIL. | A mixture of Scored and PASS/FAIL questions, accounting for 90% of the overall non-cost score. Social Value accounts for 10% of the overall non-cost score. | Cost of overall bid used to calculate the VFM Index. All additional questions are PASS/FAIL. |

D13. The highest VFM Index value is deemed to provide more 'quality'/non-cost score per £ and is therefore the winning tender.

D14. In the event that two tenderers receive the same VFM Index score, the Authority will consider the highest score to four decimal places the winner of the competition.

D15. Please note that the Authority can only evaluate those elements stated in your tender. The Authority reserves the right to seek clarification from Tenderers if any part of their proposal cannot be evaluated adequately.

D16. All questions are contained in either the Qualification, Technical or Commercial envelopes on the DSP. All Mandatory questions in the DSP are highlighted by a red Asterix and must be completed.

D17. Each question details the scores available and – if applicable – the minimum score that must be achieved. Please read each question and each associated evaluation/scoring criteria carefully. **If a potential tenderer is awarded a score below the stated minimum score, the Authority reserves the right to exclude that company from the Competition.** The Authority has ensured any grounds for exclusion have been clearly stated within the question.

D18. Please note that some questions have been given a weighting, which (if applicable) is indicative of the relative importance of each subject area to the procurement.

Qualification Questions

D19. The Qualification Envelope on the DSP contains three mandatory Questions relating to the submission of your tender for the requirement that must be completed. There is no MEAT weighting associated with the commercial scoring element.

Non-Cost Score – Technical Envelope

D20. The Technical Questions are located at Section 2.1 of the Technical Envelope on the DSP.

D21. There are a total of eight (8) technical questions that have been derived from the Statement of Requirements (SOR) (Annex A) and from the Technical Specification (Annex A Appendix 1).

D22. The maximum achievable score in the Technical Envelope is 90% (weighted).

D23. Questions 1,3 and 7 are 'Pass/Fail'. These correspond to the technical requirements of greatest importance to the successful outcome of the contract i.e. delivering the desired Fans to the necessary technical specification. This includes Mandatory, Key, and some high-priority requirements. **Please be aware that achieving a 'Fail' against any of these questions will result in exclusion from the competition. The questions clearly state if 'all' criteria listed must be met in order to achieve a 'Pass'.**

D24. The remaining questions are scored questions. For each scored question, the Authority will evaluate the evidence provided by the tenderer, using the scoring methodology/descriptions against each question, in order to determine a score. These questions have been weighted according to the importance to the procurement.

D25. Where there is a minimum score against a question that must be achieved, the Authority has clearly stated this within the question on the DSP. Please be aware that if your bid does not meet the minimum score identified in the question (if applicable), then the Authority will exclude you from the competition.

Non-Cost Score - Social Values (SV)

D26. The Technical Envelope also includes questions that evaluate the Tenderer's ability to provide Social Value. Under the Model, a minimum overall weighting for social value of 10% of the overall technical score is mandated. The delivery of Social Value outcomes is mandatory for inclusion in the award of central government contracts. Please refer to the SOR (Annex A) for the Social Value requirements that will form a part of the resulting contract.

D27. The Authority have selected Model Award Criteria (MAC) and Sub-criteria from the policy outcomes within the Social Value Model that are relevant and proportionate to the subject matter of this contract. These form the basis of the SV questions, and are as follows:

- a. Theme 2: Tackling Economic Equality (5% weighting)
 - Policy Outcome: Create new businesses, new jobs and new skills
- b. Theme 3: Fighting Climate Change (2.5% weighting)
 - Policy Outcome: Effective stewardship of the environment
- c. Theme 4: Equal Opportunity (2.5% weighting)
 - Policy Outcome: Tackle Workforce Inequality

D28. The Social Value Questions are located at Section 2.2 of the Technical Envelope on the DSP. The Social Value questions are scored questions. The Authority will evaluate the evidence provided within your tender response against the award criteria (MAC) and sub-criteria the scoring methodology detailed alongside the question.

D29. Please note that these are mandatory questions and must be completed. **Please note that a score above '0' must be achieved for all social value questions. If your bid does not meet the minimum score identified in the question, then the Authority will have the**

right to exclude you from the competition.

Non-Cost Score – Commercial Questions

D30. Finally, the Qualification Envelope on the DSP contains project-specific Commercial Questions (excluding Cost). There is no MEAT weighting associated with the commercial scoring element.

D31. The Commercial criteria will evaluate the tenders against the minimum commercial requirements of the tender. This includes but is not limited to: compliance against the intended Terms and Conditions, completion of the DEFFORM 47 and submission of all necessary returns.

D32. All Commercial questions are mandatory for completion and all questions are 'Pass/Fail'. **Please be aware that achieving a 'Fail' against any of these questions will result in exclusion from the competition.**

Cost Score

D33. The Commercial Envelope on the DSP contains all questions relating to cost. Please ensure that you have submitted individual prices against each Line item as part of your bid. **Please be aware that if there are prices missing, then this will be marked as a non-compliant bid and you shall be excluded from the competition.**

D34. Bidders should be aware that due to the contract length, the prices returned for Contract Years 1-3 must be Firm Prices and the prices returned for Contract Year 4 until contract expiry will be subject to Variation of Price (VOP) to account for market fluctuations over this period. Please refer to Condition 45.7 and 45.8 for details on the applicability of VOP and the specific Index to be applied.

D35. Please ensure any prices provided are Ex VAT unless explicitly stated otherwise.

D36. The prices inputted into this envelope will be utilised to calculate the VfM Index in order to determine the competition winner. Specifically, the envelope is configured to use the Tenderer's Overall Bid Price (Ex VAT).

Section E - Instructions on Submitting Tenders

Submission of your Tender

E1. Your Tender and any ITT Documentation must be submitted electronically via the Defence Sourcing Portal (DSP) by 10:00 20-September-2021. The Authority reserves the right to reject any Tender received after the stated date and time. Hard copy, paper or delivered digital Tenders (e.g. email, DVD) at OFFICIAL SENSITIVE classification are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender response to 701547382.

E2. You must provide via the DSP one priced copy of your Tender and one unpriced copy. Both copies should be clearly labelled and easily identifiable. You must ensure that there are no prices present in your unpriced copy. The Authority has the right to request, at its discretion, that any pricing information found in the unpriced copy is redacted in accordance with paragraph E3.

E3. The Authority may, in its own absolute discretion allow the Tenderer to rectify any irregularities identified in the Tender by the Authority or provide clarification after the Tender return date. For example, this may include, but is not limited to, redacting pricing information in the unpriced copy of the tender, rectifying, or providing clarification in relation to a corrupt or blank document. Tenderers will be provided with instructions via the DSP on how they can correct such irregularities which must be completed by the deadline set. The Authority will cross reference the amended Tender with the original Tender submitted to the DSP before the Tender return date to ensure that no other amendments, other than in relation to the specific irregularity/clarification communicated by the Authority, have been made. Should Tenderers make additional amendments to the Tender other than those relating to the specific irregularity/clarification communicated to the Tenderer by the Authority, this will result in a non-compliant bid.

E4. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please contact isabelle.hart100@mod.gov.uk if you have a requirement to submit documents above OFFICIAL SENSITIVE

E5. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the DSP. You must contact isabelle.hart100@mod.gov.uk to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority.

E6. You must ensure that your DEFFORM 47 Annex A is signed, scanned and uploaded to DSP with your Tender as a PDF (it must be a scanned original). The remainder of your Tender must be compatible with MS Word and other MS Office applications.

Lots

E7. This requirement has not been split into lots

Variant Bids

E8. The Authority will not accept variant bids

Samples

E9. Samples are not required.

Section F - Conditions of Tendering

F1. The issue of ITT Documentation or ITT Material is not a commitment by the Authority to place a Contract as a result of this competition or at a later stage. Neither does the issue of this ITT or subsequent Tender submission create any implied Contract between the Authority and any Tenderer and any such implied Contract is expressly excluded.

F2. The Authority reserves the right, but is not obliged to:

- a. vary the terms of this ITT in accordance with applicable law;
- b. seek clarification or additional documents in respect of a Tenderer's submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly;
- c. visit your site;
- d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT;
- e. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic PQQ or the tender process;
- f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the PQQ response, see paragraphs A31 to A34;
- g. withdraw this ITT at any time, or choose not to award any Contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis;
- h. re-issue this ITT on a single source basis, in the event that this procurement does not result in a 'competitive process' as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014;
- i. choose not to award any Contract as a result of the current tender process;
- j. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low;

F3. The Contract will be entered into when the Authority sends written notification of its entry into the Contract, via a DEFFORM 159. Written notification will be issued, to the address you provide, on or before the end of the validity period specified in paragraph C3.

Conforming to the Law

F4. You must comply with all applicable UK legislation and any equivalent legislation in a third state.

F5. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

Bid Rigging and Other Illegal Practices

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

Defence Regulatory Reporting Cell Hotline
0800 161 3665 (UK) or
+44 1371 85 4881 (Overseas)

Conflicts of Interest

F7. Any attempt by Tenderers or their advisors to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:

- devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
- enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
- enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
- canvass the Authority or any employees or agents of the Authority in relation to this procurement; or
- attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender.

F8. Where you have advised the Authority in relation to this procurement procedure or otherwise have been or are involved in any way in the preparation or conduct of this procurement procedure or where any other actual or potential conflict of interest (COI) exists or arises at any point before the Contract award decision, you must notify the Authority immediately.

F9. Where an actual or potential COI exists or arises, you must provide a proposed Compliance Regime within seven (7) calendar days of notifying the Authority of the actual or potential COI. The proposal must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition and provides full details listed in F9 a to g below. Where the Contract is awarded and the COI is still relevant post-Contract award decision, your proposed Compliance Regime will become part of the Contract Terms and Conditions. As a minimum, the Compliance Regime must include:

- a. the manner of operation and management;
- b. roles and responsibilities;
- c. standards for integrity and fair dealing;
- d. levels of access to and protection of competitors' sensitive information and Government Furnished Information;
- e. confidentiality and/or non-disclosure agreements (e.g. DEFFORM 702);
- f. the Authority's rights of audit; and
- g. physical and managerial separation.

F10. Tenderers are ultimately responsible for ensuring that no COI exist between the Tenderer and its advisers, and the Authority and its advisers. Any Tenderer who fails to comply with this requirement (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) may be

disqualified from the procurement at the discretion of the Authority.

Government Furnished Assets

F11. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If unsuccessful in this competition, you must seek instructions for the GFA from the named Commercial Officer.

Standstill Period

F12. The Authority is allowing a space of ten (10) calendar days between the date of dispatch of the electronic notice of its decision to award a Contract to the successful Tenderer before entering into a Contract, known as the standstill period. The standstill period ends at 23:59 on the 10th day after the date the DEFFORM 158s are sent. If the 10th day is not a business day, the standstill period ends at 23:59 of the next business day.

Publicity Announcements

F13. If you wish to make an announcement regarding this procurement, you must seek approval from the named Commercial Officer and Press Office and such permission will only be given at the sole discretion of the Authority. Requests must be made in writing to the named Commercial Officer and a copy of the draft announcement provided. This shall then be forwarded to the Press Office and their contact details will be provided for further follow up.

F14. Under no circumstances should you confirm to any Third Party the Authority's Contract award decision before the Authority's announcement of the award of Contract.

Sensitive Information

F15. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom of Information requests.

F16. For these purposes, the Authority may share within Government any of the Tenderers documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the Authority during this procurement. Tenderers taking part in this competition must identify any sensitive material in the DEFFORM 539A (or SC1B Schedule 4 or SC2 Schedule 5) and consent to these terms as part of the competition process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F17. Where required, the Authority will disclose on a confidential basis any information it receives from Tenderers during the tender process (including information identified by the Tenderer as Commercially Sensitive Information in accordance with the provisions of this ITT) to any Third Party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.

Reportable Requirements

F18. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.

F19. Your Tender will be deemed non-compliant and excluded from the tender process if you fail to complete the Annex in full and attach relevant information where required.

Specific Conditions of Tendering

F20. Please note that the Supplier Cyber Protection Service (SCPS) tool has been temporarily replaced with an interim process whilst the service is transitioned to a new tool. In the meantime, please complete the Cyber Risk Assessment or [SAQ](#) for this requirement using [MS Forms](#) for the Cyber Risk Profile appropriate to this contract. The RA outcome and reference number will be provided by the DCPD Team via email (ISSDes-DCPD@mod.gov.uk) following submission. Tenderers must provide a copy of the completed MS Form, a completed letter from DEFFORM 47 Annex B, and an email from DCPD confirming the SAQ result.

F21. With reference to Condition 45.5 (GFA), Tenderers should be aware when pricing their bids that the request for and holding of GFA once on Contract will be at the discretion of the Contractor. Please note that it is entirely possible that the Contractor may choose never to hold GFA for this contract.

F22. For clarity, the tenderer is to provide the following returns with their bid. Please note this list is not exhaustive and is provided here to assist you in compiling your bid.

- A Draft Deliverable Quality Plan – iaw Annex A to the ITT
- A Draft Manufacturing Project Plan – iaw Annex A to the ITT
- A draft Risk and Opportunity Management Plan – iaw Annex A to the ITT
- A completed Cyber Risk Assessment and Cyber Risk Profile Letter
- A completed Schedule 5 - Contractor's Commercial Sensitive Information Form (i.a.w. condition 13)
- A completed Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract
- A Completed Schedule 7 - Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract Data Requirements

DEFFORM 47 Annex A - Edn 11/20
Ministry of Defence

Tender Submission Document (Offer) – Ref Number 701547382

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

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

| | | | | |
|---|-----------------------------|-------------------------|-------------------------------|--------------|
| Applicable Law | | | | |
| I agree that any contract resulting from this competition shall be subject to English Law | | | | Yes / No |
| Total Value of Tender (excluding VAT) | | | | |
| <p>£</p> <p>WORDS</p> <p>.....</p> | | | | |
| UK Value Added Tax | | | | |
| If registered for Value Added Tax purposes, please insert: | | | | |
| a. Registration No | | | | |
| b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £..... | | | | |
| Location of work (town / city) where contract will be performed by Prime: | | | | |
| Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required) | | | | |
| Tier 1 Sub-contractor Company Name | Town / city to be Performed | Contractor Deliverables | Estimated Value | SME Yes / No |
| | | | | |
| | | | | |
| | | | | |
| Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)): | | | Tenderer's Declaration | |
| Are the Contractor Deliverables subject to IPR that has been exclusively, or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding? | | | Yes* / No | |

| | |
|---|-------------------------|
| Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, please complete and attach DEFFORM 528. | Yes* / No |
| Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract Terms & Conditions? | Yes* / No |
| Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended? | Yes / No |
| Have you completed a Supplier Assurance Questionnaire on the Supplier Cyber Protection Service? | Yes* / No / N/A |
| Have you completed Form 1686 for sub-contracts? | Yes / No |
| Have you completed the compliance matrix/ matrices? | Yes / No / Not Required |
| Are you a Small Medium Sized Enterprise (SME)? | Yes / No |
| Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs? | Yes / No |
| Have you completed and attached Tenderer's Commercially Sensitive Information Form? | Yes / No |
| If you have not previously submitted a Statement Relating to Good Standing, within the last 12 months, or circumstances have changed have you attached a revised version? | Yes* / No / N/A |
| Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract contain Asbestos, as defined by the control of Asbestos Regulations 2012? | Yes* / No |
| Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement? | Yes* / No |
| Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly | |
| Do the Contractor or any item provided in accordance with the Terms and Conditions of the Contract contain Asbestos, as defined by the control of Asbestos Regulations 2012? | Yes* / No |
| Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer? | Yes / No / Not Required |
| Have you complied with the requirements of the Defence Safety Authority Regulatory Articles? | Yes / No / Not Required |
| Have you completed the additional Mandatory Requirements (as per paragraph F18) stated in this ITT? | Yes / No / Not Required |
| Have you provided a copy of your public liability insurance certificate to the value of £5M with your tender return? | Yes* / No |
| In addition, please confirm that you have not included the cost of insurance for indemnities offered within your bid price. | Yes* / No |
| *If selecting Yes to any of the above questions, attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer). | |
| Tenderer's Declaration of Compliance with Competition Law | |

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

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

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

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

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

Dated this..... day of Year

Signature:

In the capacity of

.....
(Must be scanned original)
Director, Manager, Secretary etc.)

(State official position e.g.

Name: (in BLOCK CAPITALS)

Postal Address:

duly authorised to sign this Tender for and on behalf of:

Telephone No:

(Tenderer's Name)

Registered Company Number:

Dun And Bradstreet number:

Appendix 1 to Annex A (Offer)
Edn11/20

Information on Mandatory Declarations

IPR Restrictions

1. Where the Contractor Deliverables are subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding you must select 'Yes' in Annex A (Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding) .
2. If you have answered 'Yes' in Annex A (Offer) as directed by paragraph 3 below, you must provide details in your Tender of any Contractor Deliverable which will be, or is likely to be, subject to any IPR restrictions or any other restriction on the Authority's ability to use or disclose the Contractor Deliverable, including export restrictions. In particular, you must identify:
 - a. any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered Design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a Third Party;
 - b. any allegation made against you, whether by claim or otherwise, of an infringement of Intellectual Property Rights (whether a Patent, Registered Design, unregistered Design Right, Copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
 - c. the nature of any allegation referred to under sub-paragraph 2.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
 - d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 2.b.
3. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 2. The Authority will not acknowledge any such restriction unless so notified under paragraph 2 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.
4. If you have previously provided information under paragraphs 2 and 3 you can provide details of the previous notification, updated as necessary to confirm their validity.

Notification of Foreign Export Control Restrictions

5. If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.
6. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant contract, you must provide the following information in your Tender:

Whether all or part of any Contractor Deliverables are or will be subject to:

- a. a non-UK export licence, authorisation or exemption; or
- b. any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 6 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

7. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 6. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.

8. This does not include any Intellectual Property specific restrictions mentioned in paragraph 2.

9. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 6.

10. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

Import Duty

11. United Kingdom (UK) legislation permits the use of various procedures to suspend customs duties.

12. For the purpose of this competition, for any deliverables not yet imported into the UK, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and / or suspended.

13. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate Her Majesty's Revenue & Customs (HMRC) authorisations.

Cyber Risk

14. Cyber risk has been considered and in accordance with the Cyber Security Model resulted in a Cyber Risk Profile of 'Very Low'. The Risk Assessment Reference is **RAR-HDJG32YB**. Tenderers are required to complete the Suppliers Assurance Questionnaire on the Supplier Cyber Protection Service and submit this as part of their Tender response, together with a Cyber Security Implementation Plan as appropriate. Please refer to F20 of DEFFORM 47 for additional details on completion.

Sub-contracts Form 1686

15. [Form 1686](#) (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. Form 1686 and further guidance can be found in the Cabinet Office's [Contractual Process](#).

Small and Medium Enterprises

16. The Authority is committed to supporting the Government's Small and Medium-sized Enterprise (SME) policy, and we want to encourage wider SME participation throughout our supply chain. Our goal is that 25% of the Authority's spending should be spent with SMEs by 2022; this applies to the money which the Authority spends directly with SMEs and through the supply chain. The Authority uses the European Commission definition of SME.

17. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their sub-contractors are encouraged to make their own commitment and register with the [Prompt Payment Code](#).

18. Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative, however this is not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation. Information on the Authority's purchasing arrangements, our commercial policies and our SME policy can be found at [Gov.UK](#) and the DSP.

19. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 on the Defence Sourcing Portal and further details can be obtained directly from: <https://www.gov.uk/guidance/subcontract-advertising>. This process is managed by the Strategic Supplier Management team who can be contacted at: DefComrcISSM-Suppliers@mod.gov.uk.

Transparency, Freedom of Information and Environmental Information Regulations

20. The Authority shall publish notification of the Contract and publish Contract documents where required following a request under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person or might prejudice fair competition between suppliers.

21. The Authority may publish the contents of any resultant Contract in line with government policy set out in the Prime Minister's letter of May 2010 ([Government Transparency and Accountability](#)) and in accordance with the provisions of either DEFCON 539, SC1B Conditions of Contract Clause 5 or SC2 Conditions of Contract Clause 13.

22. Before publishing the Contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2004 ("the EIR").

23. You must complete the attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A, SC1B Schedule 4 or SC2 Schedule 5) explaining which parts of your Tender you consider to be commercially sensitive. This includes providing a named individual who can be contacted with regard to FOIA and EIR.

24. You should note that while your views will be taken into consideration, the ultimate

decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

Electronic Purchasing

25. Tenderers must note that use of the [Contracting, Purchasing and Finance \(CP&F\)](#) electronic procurement tool is a mandatory requirement for any resultant contract awarded following this Tender. By submitting this Tender, you agree to electronic payment. You may consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant and excluded from the tender process.

Change of Circumstances

26. In accordance with paragraph A31, if your circumstances have changed, please select 'Yes' to the appropriate question on DEFFORM 47 Annex A and submit a Statement Relating to Good Standing with your Tender.

Asbestos, Hazardous Items and Depletion of the Ozone Layer

27. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' to the appropriate question on DEFFORM 47 Annex A and provide further details in your Tender.

Defence Safety Authority (DSA) Requirements

28. There are no DSA Requirements.

Bank or Parent Company Guarantee

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

**DEFFORM 47 Annex B
Cyber Risk Profile Letter to Contractors**

Isabelle Hart
Commercial Officer
Land Equipment Vehicle Support Team
MOD Abbey Wood
Bristol
BS34 8JH
Tel: +443001586279
Email: isabelle.hart100@mod.gov.uk

[Contractor's representative,
Contractor's address for provision of notices,
Contact details.]

12 August 2021

**ITT – REFERENCE: 701547382 - PROCUREMENT OF HAAIP MAIN ENGINE
COOLING FANS
CYBER RISK PROFILE FOR ABOVE ITT: Very Low**

We refer to the above-mentioned ITT.

Please note that, for all contracts and relevant Sub-contracts which are assessed to have a Cyber Risk Profile of HIGH, clause 3.1.3 of DEFCON 658 is suspended until further notice but you must otherwise continue to comply fully with DEFCON 658 Edn 11/17. As part of this process, you must complete the Risk Assessment and Supplier Assurance Questionnaire using the interim process described in ISN 2021-05 and you must continue the flow down throughout the supply chain until the Cyber Risk Profile is no longer assessed to be HIGH.

With effect from 4 June 2021, for all contracts which are assessed to have a Cyber Risk Profile lower than HIGH (i.e. MODERATE, LOW or VERY LOW), the MOD confirms that the following clauses of DEFCON 658 shall operate as set out below until further notice by ISN and letter:

Clauses 3.1.1 and 3.1.2:

These clauses shall remain in effect for **all** MOD awarded contracts but, where a MOD awarded contract has a Cyber Risk Profile below HIGH and/or where a Sub-contract has a Cyber Risk Profile below HIGH, this clause is suspended for all relevant lower tier Sub-contracts which are awarded on or after 4 June 2021. Please see the diagrams attached at Annex A to this letter which are provided for illustrative purposes.

Clause 3.1.3:

This clause is suspended for all contracts and Sub-contracts which are due to re-complete the CSM Supplier Assurance Questionnaire between 4 June 2021 and the end of the interim process.

General:

For the avoidance of doubt please note that:

1. All other provisions of DEFCON 658 will continue to apply;
2. In accordance with clause 3.1.9, DEFCON 658 should continue to be included in all relevant Sub-contracts. Strictly to the limited extent outlined above and in relation to Sub-contracts assessed to have a Cyber Risk Profile below HIGH, MOD is content for contractors to offer their Sub-contractors a suspension of the equivalent provisions to 3.1.1, 3.1.2 and 3.1.3 until the full Supplier Cyber Protection Service is available again;
3. For Sub-contracts where the prime contract with MOD has been assessed to have a Cyber Risk Profile of MODERATE, LOW or VERY LOW, it is a matter for you to determine how best to ensure that cyber risk is appropriately managed until the full Supplier Cyber Protection Service is available again. However, contractors are expected to act reasonably and proportionately in relation to relevant Sub-contracts.

The Supplier Cyber Protection Service tool is expected to be fully operational in the Autumn of 2021 and the MOD will notify you by ISN and letter when you should recommence the use of the online tool.

At this point, MOD will also confirm the period within which:

- a. any annual renewals of CSM Supplier Assurance Questionnaires must be completed in order to be considered compliant with clause 3.1.3 of DEFCON 658; and
- b. Sub-contracts with a Cyber Risk Profile of MODERATE, LOW and VERY LOW must again comply with all of the obligations set out in clauses 3.1.1 and 3.1.2.

This period is expected to be no less than 6 weeks, although may be longer depending on the period for which the Supplier Cyber Protection Service has been offline.

Signed on behalf of the MODI. Hart.....

Please sign and date this letter below and return by post and email to the MOD Commercial Officer at the email address above to confirm receipt and acknowledge the provisions set out above.

Signed on behalf of the Contractor by

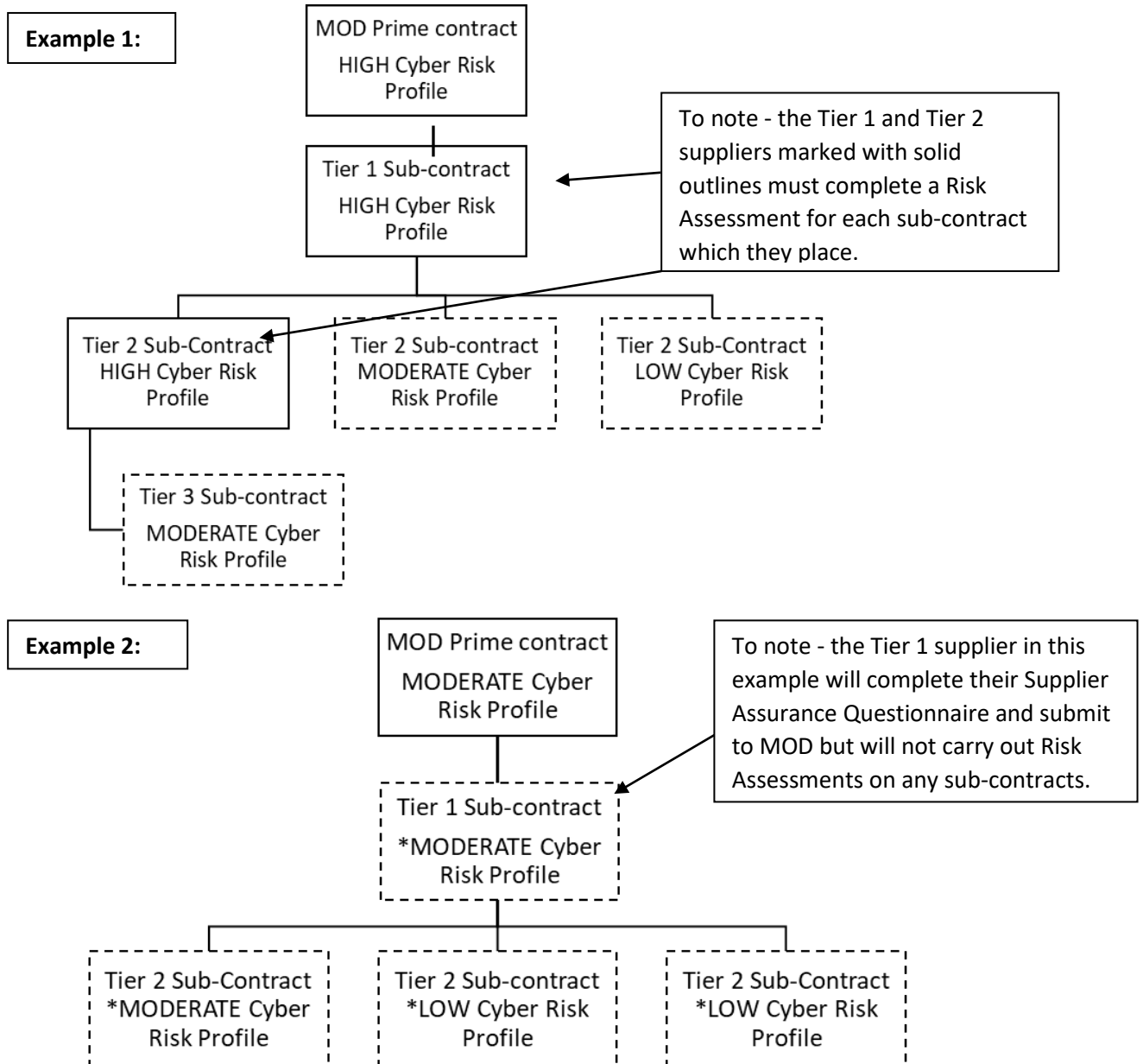
Date2021

Annex A to the Cyber Profile Letter - Illustrative Examples

In relation to contracts awarded on or after 4 June 2021, clauses 3.1.1 and 3.1.2 of DEFCON 658 continue to apply to all contracts / Sub-contracts marked with solid outlines below but are suspended for those shown with dashed outlines.

For the avoidance of doubt, Supplier Assurance Questionnaires should still be completed, using the interim process, for Sub-contracts where the sub-contractor is in receipt of a Risk Assessment from a higher tier contractor.

Boxes marked with an * indicate lower tier Sub-contracts where the sub-contractor has not received a Risk Assessment from a higher tier contractor and will not have completed a Supplier Assurance Questionnaire during the interim cyber assurance process. They are therefore estimated to have the Cyber Risk Profile indicated for illustrative purposes only.



Standardised Contracting Terms

SC2 GENERAL CONDITIONS

General Conditions

1. General

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
 - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their obligations under, the Contract;
 - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their obligations under the Contract;
 - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
 - (4) for so long as the Contract remains in force they shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
 - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act or thing which the Authority is required or authorised to take or do

under the Contract may be taken or done only by the person (or its nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.

- (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

2. Duration of Contract

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

3. Entire Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

4. Governing Law

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
 - (1) Clause 4.a, 4.b and 4.c shall be amended to read:

“a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.

b. Subject to Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other

jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

- (2) Clause 39.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 39.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 39.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

5. Precedence

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
 - (1) Conditions 1 - 43 (and 44 - 46, if included in the Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
 - (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
 - (3) the remaining Schedules; and
 - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will

seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 39 (Dispute Resolution).

6. Formal Amendments to the Contract

- a. Except as provided in Condition 30 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
 - (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used);
 - (2) the Authority's offer set out in a serially numbered amendment letter issued by the Authority to the Contractor; and
 - (3) the Contractor's unqualified acceptance of such offer as evidenced by the Contractor's duly signed DEFFORM 10B.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
 - (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127. Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643 (SC2); or
 - (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

Changes to the Specification

- d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.
- e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

7. Authority Representatives

- a. Any reference to the Authority in respect of:

- (1) the giving of consent;
- (2) the delivering of any Notices; or
- (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this Condition 7.

- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with Condition 6 (Formal Amendments to the Contract).

8. Severability

- a. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
 - (1) such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
 - (2) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

9. Waiver

- a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

10. Assignment of Contract

- a. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

11. Third Party Rights

- a. Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its

own right and the Parties to the Contract declare that they have no intention to grant any such right.

12. Transparency

- a. Subject to clause 12.b but notwithstanding Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with clause 12.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 (Contractor's Commercially Sensitive Information).
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 12.b. The Contractor acknowledges and accepts that their representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this Condition 12 shall affect the Contractor's rights at law.

13. Disclosure of Information

- a. Subject to clauses 13.d, 13.e, 13.h and Condition 12 each Party:
 - (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
 - (1) is disclosed to their employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

- c. The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses 13.a and 13.b shall not apply to any Information to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
 - (3) can show:
 - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
 - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

- e. Neither Party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Condition.

- f. The Authority may disclose the Information:
- (1) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
 - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (4) on a confidential basis to a professional adviser, consultant or other person

engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;

- (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

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

- g. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- i. Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

14. Publicity and Communications with the Media

- a. The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

15. Change of Control of Contractor

- a. The Contractor shall notify the Representative of the Authority at the address given in clause 15.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
- b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section
Strategic Supplier Management Team
Spruce 3b # 1301

MOD Abbey Wood,
Bristol, BS34 8JH

and emailed to: DefComrcISSM-MergersandAcq@mod.gov.uk

- c. The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to contract award.
- d. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 15.a. The Authority shall act reasonably in exercising its right of termination under this Condition.
- e. If the Authority exercises its right to terminate in accordance with clause 15.d the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- f. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Condition.

16. Environmental Requirements

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

17. Contractor's Records

- a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
 - (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
 - (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

- c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to the provisions of clause 13, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
 - (1) the end of the Contract term;
 - (2) the termination of the Contract; or
 - (3) the final payment,whichever occurs latest.

18. Notices

- a. A Notice served under the Contract shall be:
 - (1) in writing in the English language;
 - (2) authenticated by signature or such other method as may be agreed between the Parties;
 - (3) sent for the attention of the other Party's Representative, and to the address set out in Schedule 3 (Contract Data Sheet);
 - (4) marked with the number of the Contract; and
 - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.
- b. Notices shall be deemed to have been received:
 - (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
 - (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
 - (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

19. Progress Monitoring, Meetings and Reports

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that their Contractor's representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times

and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:

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

Supply of Contractor Deliverables

20. Supply of Contractor Deliverables and Quality Assurance

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
 - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
 - (2) discharge their obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause 20.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
 - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (2) notify the Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
 - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

21. Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 22 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

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

a. Packaging responsibilities are as follows:

- (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
- (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
- (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
- (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:

- (1) The Contractor shall provide Packaging which:
 - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
 - (b) is labelled to enable the contents to be identified without need to breach the package; and
 - (c) is compliant with statutory requirements and this Condition.
- (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
 - (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
 - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
 - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 22.i to 22.k.

- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
- (1) The Health and Safety At Work Act 1974 (as amended);
 - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
 - (3) The REACH Regulations 2007 (as amended); and
 - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
- (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
 - (2) The Air Navigation (Amendment) Order 2019.
- e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with Condition 23 (Supply of Hazardous Materials or Substances in Contractor Deliverables).
- f. The Contractor shall comply with the requirements for the design of MLP which include clauses 22.f and 22.g as follows:
- (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.
 - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCP-SptEng-Pkg
MOD Abbey Wood
Bristol, BS34 8JH
Tel. +44(0)30679-35353
DESSEOCSCP-SptEng-PKq@mod.uk
 - (b) The MPAS Documentation is also available on the DStan website.
 - (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).
 - (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').
 - (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

- (5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
 - (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
 - (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 22.f.(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
 - (8) The documents supplied under clause 22.f.(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.
- g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:
- (1) If the Contractor or their Subcontractor is the PDA they shall:
 - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 22.f.
 - (b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - i. a list of all SPIS which have been prepared or revised against the Contract; and
 - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
 - (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 22.g.(1)(b).
 - (2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
 - (3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 22.g.(1)(b).
 - (4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g.(1)(a) and 22.g.(1)(b).
- h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall

obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.

- i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
 - (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
 - (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
 - (b) Each consignment package shall be marked with details as follows:
 - i. name and address of consignor;
 - ii. name and address of consignee (as stated in the Contract or order);
 - iii. destination where it differs from the consignee's address, normally either:
 - (i). delivery destination / address; or
 - (ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
 - iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
 - (i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 22.I.
 - (2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:
 - (a) description of the Contractor Deliverable;
 - (b) the full thirteen digit NATO Stock Number (NSN);
 - (c) the PPQ;
 - (d) maker's part / catalogue, serial and / or batch number, as appropriate;
 - (e) the Contract and order number when applicable;
 - (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
 - (g) shelf life of item where applicable;
 - (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in

accordance with Def Stan 81-041);

- (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
 - (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
 - (1) the full 13-digit NSN;
 - (2) denomination of quantity (D of Q);
 - (3) actual quantity (quantity in package);
 - (4) manufacturer's serial number and / or batch number, if one has been allocated; and
 - (5) the CP&F-generated unique order identifier.
- k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet).
- l. The requirements for the consignment of aggregated packages are as follows:
 - (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
 - (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
 - (a) class group number;
 - (b) name and address of consignor;
 - (c) name and address of consignee (as stated on the Contract or order);
 - (d) destination if it differs from the consignee's address, normally either:
 - i. delivery destination / address; or
 - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
 - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note

shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;

- (f) the CP&F-generated shipping label; and
 - (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).
 - n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 24 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
 - o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
 - p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Condition 17 (Contractor's Records).
 - q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
 - r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
 - s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
 - t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
 - u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

23. Supply of Data for Hazardous Materials or Substances in Contractor Deliverables

- a. The Contractor shall provide to the Authority:

- (1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance the extant Classification, Labelling and Packaging (GB CLP) Regulation; and
- (2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the extant UK REACH Regulation:

- (1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 23.h below; and
- (2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

c. If the Contractor is required, under, or in connection with the Contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).

e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the Contractor shall additionally provide details of:

- (1) activity; and
- (2) the substance and form (including any isotope);

g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 23.a.(1) and 23.b.(1), any information arising from the provisions of clauses 23.e, 23.f and

23.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

- (1) Hard copies to be sent to:

Hazardous Stores Information System (HSIS)
Department of Safety & Environment, Quality and Technology (DS & EQT)
Spruce 2C, #1260,
MOD Abbey Wood (South)
Bristol BS34 8JH

- (2) Emails to be sent to:

DESTECH-QSEPEnv-HSISMulti@mod.gov.uk

- i. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning Hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 42 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 42.
- j. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

24. Timber and Wood-Derived Products

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

- (1) shall comply with the Contract Specification; and
- (2) must originate either:
 - (a) from a Legal and Sustainable source; or
 - (b) from a FLEGT-licensed or equivalent source.

- b. In addition to the requirements of clause 24.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

- (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- (3) safeguarding the basic labour rights and health and safety of forest workers.

- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 24.a or 24.b or both.

- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- e. If the Contractor has already provided the Authority with the Evidence required under clause 24.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 24.a or 24.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).
- g. Notwithstanding clause 24.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
 - (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
 - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 24.a or 24.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
 - (1) verify the forest source of the timber or wood; and
 - (2) assess whether the source meets the relevant criteria of clause 24.b.
- i. The statistical reporting requirement at clause 24.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Condition 6 (Formal Amendments to the Contract).
- j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).
- k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with Condition 6 (Formal Amendments to the Contract).
- l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
 - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) and all such wood shall be treated for the elimination of

- (2) raw wood pests and marked in accordance with that Programme; or sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

25. Certificate of Conformity

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).
- c. The Information provided on the CofC shall include:
 - (1) Contractor's name and address;
 - (2) Contractor unique CofC number;
 - (3) Contract number and where applicable Contract amendment number;
 - (4) details of any approved concessions;
 - (5) acquirer name and organisation;
 - (6) Delivery address;
 - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
 - (8) description of Contractor Deliverable, including part number, specification and configuration status;
 - (9) identification marks, batch and serial numbers in accordance with the Specification;
 - (10) quantities;
 - (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

- d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 25.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

26. Access to Contractor's Premises

- a. The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 26.a are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

27. Delivery / Collection

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
 - (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (4) be responsible for all costs of Delivery; and
 - (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative (Transport) as detailed in box 10 of Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
 - (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
 - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
 - (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 27.b; or
 - (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 27.c.

28. Acceptance

- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
- (2) the time limit in which to reject the Contractor Deliverables defined in clause 29.b has elapsed.

29. Rejection and Counterfeit Materiel

Rejection:

- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of the Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.
- b. Rejection of any of the Contractor Deliverables under clause 29.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

Counterfeit Materiel:

- c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:
 - (1) notify the Contractor of its suspicion and reasons therefore;
 - (2) where reasonably possible, and if requested by the Contractor within 10 Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
 - (3) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 29.c.(2).(i) or the provision of a sample at 29.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
 - (4) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel

Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 29.a-29.b (Rejection).

- d. In addition to its rights under 29.a and 29.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:
 - (1) retain any Counterfeit Materiel; and/or
 - (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;

and such retention shall not constitute acceptance under Condition 28 (Acceptance).

- e. Where the Authority intends to exercise its rights under clause 29.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at their own risk and expense and subject to any reasonable controls specified by the

Authority, for:

- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
 - (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.
- f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 29.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 29.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 29.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:
- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
 - (2) to pass it to a relevant investigatory or regulatory authority;
 - (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or
 - (4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at clauses 29.f.(1) to 29.f.(3) shall not constitute acceptance under Condition 28 (Acceptance).

- g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 29.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 29.f.(4) then the balance shall accrue to the Contractor.
- h. The Authority shall not use a retained Article or consignment other than as permitted in clauses 29.c – 29.j.
- i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- j. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 29.c – 29.j except where it has been determined in accordance with Condition 39 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 29.c.(4). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 29.c.

30. Diversion Orders

- a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- c. The Authority reserves the right to cancel the Diversion Order.
- d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope

of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

- f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

31. Self-to-Self Delivery

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to their own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

Licences and Intellectual Property

32. Import and Export Licences

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
 - (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
 - (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
 - (b) the end use as: For the Purposes of HM Government; and
 - (2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- c. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include

the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

- e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
 - (1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
 - (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- g. Where the Authority invokes clause 32.e or 32.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
- i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
- j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.
- k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
 - (1) a non-UK export licence, authorisation or exemption; or

- (2) any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 33 (Third Party Intellectual Property – Rights and Restrictions).

- l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to clause 32.k.(1) or 32.k.(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- m. If the information to be provided under clause 32.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clause 32.l.
- n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 32.l or 32.m of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.
- o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clause 32.l or 32.m of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.
- p. Where following receipt of materiel from a Subcontractor or any of their other suppliers restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 30 days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 30 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 32.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

- r. In the event that the restrictions notified to the Authority pursuant to clause 32.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 32.n or 32.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with clause 32.l, termination under clause 32.t will be in accordance with Condition 42 (Material Breach) and the provisions of clause 32.v will not apply.
- s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of clause 32.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- u. Where:
 - (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to clauses 32.s or 32.t or both; or
 - (2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Formal Amendments to the Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of Condition 41 (Termination for Convenience) and as referenced in the Contract.

- v. Pending agreement of any amendment of the Contract as set out in clause 32.q or 32.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

33. Third Party Intellectual Property – Rights and Restrictions

- a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority

as soon as they become aware of:

- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
 - (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
 - (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.
clause 33.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.
- b. If the Information required under clause 33.a has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.
- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Condition shall not apply if:
- (1) the Authority has made or makes an admission of any sort relevant to such question;
 - (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
 - (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
 - (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause 33.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or

design which may be required for that purpose.

- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause 33.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
 - (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
- h. The Authority shall assume all liability and shall indemnify the Contractor, their officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
 - (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
 - (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 33.a.
- k. Where authorisation is given by the Authority under clause 33.e, 33.f or 33.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
 - (1) released from payment whether by way of royalties, licence fees or similar

expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

- (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
 - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
 - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, their officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
 - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
- (1) clauses 33.a – 33.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
 - (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
 - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
 - (4) the Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
 - (5) following a notification under clause 33.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against

whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

- (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in Condition 33 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

Pricing and Payment

34. Contract Price

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to clause 34.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

35. Payment and Recovery of Sums Due

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 35.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 35.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 35.a and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for

the purpose of clause 35.c after a reasonable time has passed.

e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.

f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

36. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-

EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 39 (Dispute Resolution).

- g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 36.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

37. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 11 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 37 shall be subject to:
 - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 35.f;
 - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (3) the Authority receiving notification under both clauses 37.b and 37.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 37.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
 - (1) is made aware of the Authority's continuing rights under clauses 37.a.(1) and 37.a.(2); and
 - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 37.a.(1) and 37.a.(2).
- d. The provisions of Condition 35 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

38. Subcontracting and Prompt Payment

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a subcontract, they shall cause a term to be included in

such subcontract:

- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
- (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
- (3) providing that where the Contractor fails to comply with clause 38.b.(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 38.b.(2) after a reasonable time has passed; and
- (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 38.b.(1) to 38.b.(4).

Termination

39. Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to clause 39.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 39.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

40. Termination for Insolvency or Corrupt Gifts

Insolvency:

- a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or

- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- (6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
 - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
 - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (10) the court making an administration order in relation to the company; or
- (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (12) the company passing a resolution that the company shall be wound-up; or
- (13) the court making an order that the company shall be wound-up; or
- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 40.a.(9) to 40.a.(14) inclusive above.

- b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

Corrupt Gifts:

- c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):
 - (1) offer, promise or give to any Crown servant any gift or financial or other advantage

of any kind as an inducement or reward;

- (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
 - (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this Condition, the Authority shall:
- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.
- f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

41. Termination for Convenience

- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

- b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
- (1) not start work on any element of the Contractor Deliverables not yet started;
 - (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
 - (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
 - (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 41.b.(2) and 41.b.(3) of this Condition.
- c. Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 41.b):
- (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
 - (a) in the possession of the Contractor at the date of termination; and
 - (b) provided by or supplied to the Contractor for the performance of the Contract,except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
 - (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - (a) all such unused and undamaged materiel; and
 - (b) Contractor Deliverables in the course of manufacture,that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
 - (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.
- d. The Authority shall (subject to clause 41.e below and to the Contractor's compliance with any direction given by the Authority in clause 41.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
- (1) the Contractor taking all reasonable steps to mitigate such loss; and
 - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- f. The Contractor shall include in any subcontract over £250,000 which it may enter into for

the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 41.a to 41.e except that:

- (1) the name of the Contractor shall be substituted for the Authority except in clause 41.c.(1);
 - (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and
 - (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 41.
- g. Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

42. Material Breach

- a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.
- b. Where the Authority has terminated the Contract under clause 42.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (2) obtaining the Contractor Deliverable in substitution from another supplier.

43. Consequences of Termination

- a. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

Additional Conditions

44. The project specific DEFCONS and DEFCON SC variants that apply to the Contract are:

DEFCON 15 (Edn 06/21) – Design Rights
DEFCON 16 (Edn 10/04) - Repair and Maintenance Information.
DEFCON 21 (Edn 10/04) - Retention of Records
DEFCON 023 (SC2) (Edn. 06/21) - Special Jigs, Tooling and Test Equipment
DEFCON 076 (SC2) (Edn. 06/21) - Contractor's Personnel at Government Establishments
DEFCON 082 (SC2) (Edn. 06/21) - Special Procedure For Initial Spares
DEFCON 90 (Edn 06/21)– Copyright
DEFCON 117 (SC2) (Edn. 11/17) - Supply Of Information For NATO Codification And

Defence Inventory Introduction

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

DEFCON 532A (Edn. 04/20) -Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 601 (SC) (Edn. 03/15) - Redundant Material

DEFCON 602A (Edn. 12/17) - Quality Assurance (With Deliverable Quality Plan)

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

DEFCON 624 (SC2) (Edn. 11/17) - Use of Asbestos

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

DEFCON 637 (Edn. 05/17) - Defect Investigation and Liability

DEFCON 647 SC2 (Edn 05/21) - Financial Management Information

DEFCON 658 (SC2) (Edn. 11/17) – Cyber

Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Very Low, as defined in Def Stan 05-138.

DEFCON 660 (Edn. 12/15) - Official-Sensitive Security Requirements

DEFCON 670 SC2 (Edn 11/17) - Tax Compliance

DEFCON 694 (SC2) (Edn. 07/21) - Accounting For Property of the Authority

The Project specific DEFFORMs that apply to this contract are:

DEFFORM 129J (Edn 11/16) -The Use of the Electronic Business Delivery Form (Annex I)

DEFFORM 315 (Edn 12/19) - Contract Data Requirement (Annex E)

DEFFORM 316 (Edn 05/98) - Government Furnished Information (Annex F)

The Project specific Quality Assurance Standards and Conditions that apply to this contract are:

- AQAP 2110 Edition D, Version 1 NATO Quality Assurance Requirements for Design, Development and Production.
- AQAP 2105 Edition C Version 1 NATO Requirements for Quality Plans
- Def Stan 05-061 Part 1 - Quality Assurance Procedural Requirements - Concessions
- Def Stan. 05-061 Part 4 - Quality Assurance Procedural Requirements - Contractor Working Parties.
- Def Stan. 05-061 Part 9 - Quality Assurance Procedural Requirements - Independent Inspection Requirements for Safety Critical Items.
- Def Stan 05-057 - Configuration Management of Defence Materiel
- Def Stan 05-135 - Avoidance of Counterfeit Materiel
- AQAP 2070 Edition B Version 4 – GQA
- ISO 9001:2015 Quality Management System (QMS) (or equivalent standard)
- Def Stan 81-041 – Packaging Requirements
- Def Stan 81-041 – Return of stores to the Defence Fulfilment Centre (DFC). Part 1 – “Introduction to Defence Packaging Requirements” and Part 6 – “Package Marking”, in conjunction with the guiding principles contained in DEF CON 129 Logistics Labelling & Barcodes.
- Def Stan 00-035 - Environmental Handbook for Defence Material
 - Part 1- Control /Management

- Part 5 Environmental testing methods
- Def Stan 05-10 (all parts) - Drawing procedures.

45. The special Conditions that apply to the Contract are:**45.1 Third Party IPR Authorisation****AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

45.2. Contract Performance Measurement

- a. The Key Performance Indicators (KPIs) that will be used to assess the Contractor's performance under the Contract are detailed at Annex C.
- b. The Contractor shall record its performance in respect of the contract KPIs, in accordance with Annex C, by collecting data and using evidence to support claims in performance, providing performance reports in the format provided at Annex D (Performance Management Record).
- c. KPI performance shall form part of the agenda of the Project Review Meetings, and review will ensure that the targets remain suitable and appropriate for the duration of the Contract.
- d. Attainment of a "RED" status for any KPI during a KPI reporting period shall indicate that the Contractor has failed to achieve a minimum acceptable standard of performance.
- e. The consequences of a contractor achieving a 'RED' are outlined against each KPI in Annex C, under 'Incentives'.

45.3. Earned Value Management (EVM)

- a. The Contractor shall develop, deliver and update as needed over the term of the contract, an Earned Value Management Plan (EVMP) in accordance with the requirements stated within Schedule 10.

45.4 Limitations of Liability**Unlimited liabilities**

- a. Neither Party limits its liability for:
 - a. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - b. fraud or fraudulent misrepresentation by it or its employees;
 - c. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - d. any liability to the extent it cannot be limited or excluded by law.

- b. The financial caps on the Contractor's liability set out in Clause d. below shall not apply to the following:
 - a. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to Condition 41 – Termination for Convenience.
 - b. the Contractor's indemnity in relation to Condition 33 (Third Party IP – Rights and Restrictions);
 - c. breach by the Contractor of DEFCON 532A (SC2) joint controllers provisions set out within DEFCON 532A and the Data Protection Legislation.
- c. The financial caps on the Authority's liability set out in Clause d.d. below shall not apply to the following:
 - a. for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to Condition 41 – Termination for Convenience.

Financial limits

- d. Subject to Clauses a.**Error! Reference source not found.** and b. and to the maximum extent permitted by Law:
 - a. throughout the Contract Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - i. in respect of DEFCON 76 SC2 Edn 11/17 (Contractor's Personnel at Government Establishments) - £5,000,000 (Five Million Pounds Sterling) in aggregate;
 - ii. in respect of Condition 42b (Material Breach) - £300,000 (Three Hundred Thousand Pounds Sterling) in aggregate;
 - iii. In respect of DEFCON 611 (SC2) - £20,000 (Twenty Thousand Pounds Sterling) in aggregate; and
 - iv. in respect of Condition 27d - £0 (£0) in aggregate;
 - b. without limiting Clause d.a.i. and subject always to Clauses a. and b. the Contractor's total liability throughout the Term in respect of all other liabilities excluding the KPIs, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £500,000 (Five Hundred Thousand Pounds Sterling) in aggregate.
 - c. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses d.a. and d.b. above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses d.a. and d.b. of this Contract.

- d. Subject to Clauses a., c. and d.e., and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- e. Clause d.d. shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

- e. Subject to Clauses a., b. and f., neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
 - a. indirect loss or damage;
 - b. special loss or damage;
 - c. consequential loss or damage;
 - d. loss of profits (whether direct or indirect);
 - e. loss of turnover (whether direct or indirect);
 - f. loss of business opportunities (whether direct or indirect); or
 - g. damage to goodwill (whether direct or indirect)

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

- f. The provisions of Clause e. shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
 - a. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - i. to any third party;
 - ii. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - iii. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - b. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
 - c. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
 - d. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or

reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

- e. damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);
- f. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- g. any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- h. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- i. any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

- g. If any limitation or provision contained or expressly referred to in this Clause (45.4) is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause (45.4).

Third party claims or losses

- h. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and condition 33 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - a. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - b. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

- i. Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so

as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

45.5. Government Furnished Assets (GFA)

- a. The following assets are available as GFA and can be provided by the Authority upon request to support the completion of the Acceptance Procedure (Annex A - SOR).

| Assets available | NSN | Part Number |
|--|---------------|-------------|
| Fans (kits) - Existing Solution : | | |
| RH Fan | 2930998267360 | FV799418 |
| LH Fan | 2930998269348 | FV799519 |
| Centre Fan | 2930998267362 | FV799416 |

- b. In the event that GFA is requested, all issued items shall be recorded in the GFA Annex H to the contract.
- c. In accordance with the obligations under DEFCON 694, all GFA must be recorded on a Public Store Account (PSA), and the Contractor must submit to the Authority quarterly reports on the current PSA holdings. These reports are to be delivered to the Authority within 5 Business Days of the end of the quarter.

45.6. Obligation to Assist Exit and Termination

- a) In the event of termination in accordance with condition 41 (Material Breach), the Authority shall have the right to use all Information in whatever format generated or used by the Contractor specifically for the purposes of managing and administering this Contract and necessary for the Authority and/or a Third-Party Contractor to manage the Contract. Any information which is proprietary to the Contractor, may be subject to a fee.
- b) Within thirty (30) Business Days of receiving written notice of termination under condition 41 (Material Breach), the Contractor shall provide a list of all Information to the Authority's Project Manager (as per DEFFORM 111) and agree the nature and timescale for the transfer of such Information.
- c) Where the Contract is terminated in accordance with condition 41 (Termination for Convenience), or upon expiry of this Contract, then such rights to Information shall be limited to Information deliverable under the Contract and excludes rights to the Contractor's proprietary information or third-party proprietary information.
- d) Where the Contract is to be terminated in accordance with condition 41 (Material Breach) and the Authority seeks to place a contract with a Third-Party, then the Authority and such Third Party shall provide the Contractor with a written undertaking that the Contractor's Information provided under clauses 45.6a above shall be protected and not used by such Third Party other than for the purposes of managing and

administering the Contract or for the purposes of a replacement Contract between the Authority and such Third-Party.

- e) Prior to the Contract expiry date, or Contract termination, the Contractor shall ensure in accordance with condition 17 (Contractor's Records) that copies of all items including, but not limited to, source data, electronic files and data which contain information generated and used in support of the Contract, are available for delivery to a successor Contractor. If a successor Contractor is nominated, there will be a one-month hand-over period during which the Contractor shall complete all current work.

Payment Terms

45.7. Pricing Contract Deliverables

- a. This Contract uses both Firm and Fixed pricing methodologies. Firm and Fixed Prices for the Core Deliverables are set out in Schedule 2 (Schedule of Requirements) to the Terms and Conditions.
- b. Prices are Firm for the first three (3) years, for the period 'Contract Award – Contract Award +3 Years', and are not subject to variation in any respect whatsoever.
- c. For the remaining seven (7) years, prices shall be Fixed and subject to Variation of Price (VOP) using Index G72N (Other Transport Equipment for Domestic Market). Fixed Prices for 'Contract Award +3 Year to 31st July 2031' (Contract Expiry) shall be calculated in accordance with Condition 45.8 (Variation of Price).
- d. Payment of Contractor invoices shall be in accordance with Condition 35 (Payment and Recovery of Sums Due) and shall occur following receipt, and Acceptance of, the Contract Deliverables by the Authority, who shall confirm that the deliverables have been delivered in accordance with the Contract prior to the payment of any invoices raised.

45.8. Variation of Price (VOP)

- a. The prices stated in the Schedule of Requirements (Schedule 2) are Firm for Years 1-3 of the Contract. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased. Any such variation shall be calculated in accordance with the following formula:

$$V = P (a+b(O_i/O_0)) - P$$

Where:

V represents the variation of price

P represents the FIXED price as stated in the Schedule of Requirements (Schedule 2)

O represents the index 'G72N – Other Transport Equipment for Domestic Market'

O₀ represents the 12-month average of the OUTPUT Price Index figure prior to the start of the contract. In this case, the base period should be between 'Contract Award -1 Year – Contract Award'.

O_i represents the 12-month average of the OUTPUT Price Index for the payment date period.

a represents the Non-Variable Element (NVE) – 10% of P (representing manufacture activities not subject to inflation)

b represents the Variable Element - 90% of P

$a+b=1$

The Index referred to in Clause a above shall be taken from the following Tables:

G72N - Other Transport Equipment for Domestic Market - ONS Dataset Producer price inflation time series (MM22) (MM22)

- b. Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for Variation of Price clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
- c. In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the contract and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
- d. In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Clause c. above) shall then be applied.
- e. Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.
- f. The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.
- g. Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.
- h. Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the "requirements of this Clause (Condition 45.8)" have been met.

46. The processes that apply to the Contract are:

None.

SC2 Schedules

Schedule 1 - Definitions of Contract

| | |
|--------------------------------------|---|
| Articles | means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (This definition only applies when DEFCONs are added to these Conditions); |
| Authority | means the Secretary of State for Defence acting on behalf of the Crown; |
| Authority's Representative(s) | shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of Condition 7; |
| Business Day | means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays; |
| Central Government Body | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> a. Government Department; b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c. Non-Ministerial Department; or d. Executive Agency; |
| Collect | means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with Clause 27.c and Collected and Collection shall be construed accordingly; |
| Commercial Packaging | means commercial Packaging for military use as |

| | |
|--|--|
| | described in Def Stan 81-041 (Part 1) |
| Conditions | means the terms and conditions set out in this document; |
| Consignee | means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order; |
| Consignor | means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected; |
| Contract | means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Formal Amendments to the Contract); |
| Contract Price | means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract. |
| Contractor | means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority; |
| Contractor Commercially Sensitive Information | means the Information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive; |
| Contractor Deliverables | means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements |

if specified) which the Contractor is required to provide under the Contract;

Control

means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

- a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
- b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

CPET

means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;

Crown Use

in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

Dangerous Goods

means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);
- b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
- c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
- d. International Maritime Dangerous Goods (IMDG) Code;
- e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;
- f. International Air Transport Association (IATA)

Dangerous Goods Regulations.

| | |
|--|---|
| DBS Finance | means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet); |
| DEFFORM | means the MOD DEFFORM series which can be found at https://www.aof.mod.uk ; |
| DEF STAN | means Defence Standards which can be accessed at https://www.dstan.mod.uk ; |
| Deliver | means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with Condition 27 and Delivered and Delivery shall be construed accordingly; |
| Delivery Date | means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection; |
| Denomination of Quantity (D of Q) | means the quantity or measure by which an item of material is managed; |
| Design Right(s) | has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988; |
| Diversion Order | means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet); |
| Effective Date of Contract | means the date specified on the Authority's acceptance letter; |
| Evidence | means either: <ul style="list-style-type: none"> a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET; |
| Firm Price | means a price (excluding VAT) which is not |

subject to variation;

FLEGT

means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;

Government Furnished Assets (GFA)

is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;

Hazardous Contractor Deliverable

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

Independent Verification

means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";

Information

means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;

Issued Property

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

Legal and Sustainable

means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;

Legislation

means in relation to the United Kingdom any Act

of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

Military Level Packaging (MLP)

means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;

**Military Packager
Approval Scheme (MPAS)**

is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);

Military Packaging Level (MPL)

shall have the meaning described in Def Stan 81-041 (Part 1);

MPAS Registered Organisation

is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;

MPAS Certificated Designer

shall mean an experienced Packaging designer trained and certified to MPAS requirements;

NATO

means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;

Notices

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

Overseas

shall mean non UK or foreign;

Packaging

Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;

Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;

| | |
|---|--|
| Packaging Design Authority (PDA) | shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3; |
| Parties | means the Contractor and the Authority, and Party shall be construed accordingly; |
| Primary Packaging Quantity(PPQ) | means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1); |
| Recycled Timber | means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> a. pre-consumer reclaimed wood and wood fibre and industrial by-products; b. post-consumer reclaimed wood and wood fibre, and driftwood; c. reclaimed timber abandoned or confiscated at least ten years previously; it excludes sawmill co-products; |
| Safety Data Sheet | has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended); |
| Schedule of Requirements | means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable; |
| Short-Rotation Coppice | means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy; |
| Specification | means the description of the Contractor Deliverables, including any specifications, |

drawings, samples and / or patterns, and shall include any document or item which, individually or collectively is referred to in Schedule 2 (Schedule of Requirements). The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification;

STANAG4329

means the publication NATO Standard Bar Code Symbolologies which can be sourced at <https://www.dstan.mod.uk/fags.html>;

Subcontractor

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

Timber and Wood-Derived Products

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

Transparency Information

means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;

Virgin Timber

means Timber and Wood-Derived Products that do not include Recycled Timber.

Annex to Schedule 1

Additional Definitions of Contract law. Conditions 44 - 46 (Additional Conditions)

| | |
|-----------------------------|--|
| Project Management | For the purposes of costing the requirement, this means activities under the following headings in the Statement of Requirements (SOR)(Annex A): Contract Meetings, Reports, Plans, KPIs, Manufacture of Fans and Configuration Control. It also includes any additional Costs that may arise during the Acceptance Procedure. |
| Acceptance Procedure | Means the procedure detailed at Paragraphs 4-9 and Figure 1 (Acceptance Flow Chart) of the Statement of Requirements (SOR)(Annex A to the ITT). The purpose of this procedure is to verify that the design can interface with the CV12 Power Pack without issue prior to the start of manufacture. |
| Fan Sets | One set Means 1 centre Fan, 1 left-hand (LH) Fan and 1 right-hand (RH) Fan with associated drive and mounting components to allow interfacing with the CV12 Power Pack. |
| Trial Fit | Forms the key stage of the Acceptance Procedure. It will involve the Contractor, under Authority supervision, fitting the Fan solution to a CV12 Power Pack, as detailed at Paragraphs 7-9 and Figure 1 (Acceptance Flow Chart) of the Statement of Requirements (SOR)(Annex A to the ITT). |

Schedule 2 - Schedule of Requirements

Schedule 2 - Schedule of Requirements

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|---|------------------|--|-------------------------------------|
| | | | Per Item | Total Inc. packaging and Delivery** |
| 1 | Specification: HAAIP Fan Set Deliveries - Contract Year 1 Delivered in accordance with the SOR (Annex A to the ITT) | 28 (Sets) | TBC | TBC |
| | Delivery Date: No Later than 45 Weeks after Contract Award (minimum 5 Sets per week thereafter until completion). This date is dependent on the response provided to Question 2 of the Technical Evaluation Criteria and will be amended to reflect the winning bid at Contract award. | | | |
| | MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known | | | |
| | Packaging requirements inc. PPQ and DofQ * Commercial: Level A QTY 28 Military (SPIS): Level N QTY 0 | | | |
| 2 | Specification: Project Management – Contract Year 1 Delivered in accordance with paragraph the SOR (Annex A to the ITT) | N/A | TBC | TBC |
| | Delivery Date: 1st April 2022 | | | |
| | MOD Stock Ref. No: N/A Contractor Part Number: N/A | | | |
| | Packaging requirements inc. PPQ and DofQ *: N/A | | | |
| 3 | Specification: HAAIP Fan Set Deliveries - Contract Year 2 | 30 (Sets) | TBC | TBC |

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|---|------------------|--|-----|
| | <p>Delivered in accordance with of the SOR (Annex A to the ITT).</p> <p>Delivery Date 1st April 2022. This date is dependent on the response provided to Question 2 of the Technical Evaluation Criteria and may be amended to reflect the delivery date of Contract Year 1 Fan Sets.</p> <p>MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known</p> <p>Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 2</p> | | | |
| 4 | <p>Specification: Project Management - Contract Year 2 Delivered in accordance with the SOR (Annex A to the ITT).</p> <p>Delivery Date 1st April 2022</p> <p>MOD Stock Ref. No: N/A Contractor Part Number: N/A Packaging requirements inc. PPQ and DofQ *: N/A</p> | N/A | TBC | TBC |
| 5 | <p>Specification: HAAIP Fan Set Deliveries - Contract Year 3 Delivered in accordance with the SOR (Annex A to the ITT).</p> <p>Delivery Date 1st April 2023</p> <p>MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known</p> <p>Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 2</p> | 30 (Sets) | TBC | TBC |
| 6 | <p>Specification: Project Management- Contract Year 3 Delivered in accordance with the SOR (Annex A to the ITT).</p> | N/A | TBC | TBC |

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|---|------------------|--|-----|
| | Delivery Date 1st April 2023 MOD Stock Ref. No: N/A Contractor Part Number: N/A Packaging requirements inc. PPQ and DofQ *: N/A | | | |
| 7 | Specification: HAAIP Fan Set Deliveries - Contract Year 4 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2024 MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 2 | 30 (Sets) | TBC | TBC |
| 8 | Specification: Project Management - Contract Year 4 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2024 MOD Stock Ref. No: N/A Contractor Part Number: N/A Packaging requirements inc. PPQ and DofQ *: N/A | N/A | TBC | TBC |
| 9 | Specification: HAAIP Fan Set Deliveries - Contract Year 5 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2025 MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 2 | 30 (Sets) | TBC | TBC |

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|---|------------------|--|-----|
| 10 | Specification: Project Management - Contract Year 5 Delivered in accordance with the SOR (Annex A to the ITT). | N/A | TBC | TBC |
| | Delivery Date 1st April 2025 | | | |
| | MOD Stock Ref. No: N/A Contractor Part Number: N/A | | | |
| | Packaging requirements inc. PPQ and DofQ *: N/A | | | |
| | | | | |
| 11 | Specification: HAAIP Fan Set Deliveries - Contract Year 6 Delivered in accordance with the SOR (Annex A to the ITT). | 30 (Sets) | TBC | TBC |
| | Delivery Date 1st April 2026 | | | |
| | MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known | | | |
| | Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 2 | | | |
| 12 | Specification: Project Management - Contract Year 6 Delivered in accordance with the SOR (Annex A to the ITT). | N/A | TBC | TBC |
| | Delivery Date 1st April 2026 | | | |
| | MOD Stock Ref. No: N/A Contractor Part Number: N/A | | | |
| | Packaging requirements inc. PPQ and DofQ *: N/A | | | |
| | | | | |
| 13 | Specification: HAAIP Fan Set Deliveries - Contract Year 7 Delivered in accordance with the SOR (Annex A to the ITT). | 30 (Sets) | | |
| | Delivery Date 1st April 2027 | | | |
| | MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not | | | |

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|---|------------------|--|-----|
| | Known Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 2 | | | |
| 14 | Specification: Project Management - Contract Year 7 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2027 MOD Stock Ref. No: N/A Contractor Part Number: N/A Packaging requirements inc. PPQ and DofQ *: N/A | N/A | TBC | TBC |
| 15 | Specification: HAAIP Fan Set Deliveries - Contract Year 8 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2028 MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 2 | 30 (Sets) | TBC | TBC |
| 16 | Specification: Project Management - Contract Year 8 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2028 MOD Stock Ref. No: N/A Contractor Part Number: N/A Packaging requirements inc. PPQ and DofQ *: N/A | N/A | TBC | TBC |
| 17 | Specification: HAAIP Fan Set Deliveries - Contract Year 9 Delivered in accordance with the SOR (Annex A to the ITT). | 28 (Sets) | TBC | TBC |

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|--|------------------|--|-----|
| | Delivery Date 1st April 2029 | | | |
| | MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known | | | |
| | Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 0 | | | |
| | | | | |
| 18 | Specification: Project Management - Contract Year 9 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 29 MOD Stock Ref. No: N/A Contractor Part Number: N/A Packaging requirements inc. PPQ and DofQ *: N/A | N/A | TBC | TBC |
| 19 | Specification: HAAIP Fan Set Deliveries - Contract Year 10 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2030 MOD Stock Ref. No: NSN: Not codified Contractor Part Number: Not Known Packaging requirements inc. PPQ and DofQ * Commercial: Level A Qty 28 Military (SPIS): Level N Qty 0 | 28 (Sets) | TBC | TBC |
| 20 | Specification: Project Management - Contract Year 10 Delivered in accordance with the SOR (Annex A to the ITT). Delivery Date 1st April 2030 MOD Stock Ref. No: N/A Contractor Part Number: N/A Packaging requirements inc. PPQ and DofQ *: N/A | 1 | TBC | TBC |
| | | | | |

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|---|---|--|-----|
| 21 | Specification: Evidence Data Pack (EDP) Delivered in accordance with the Acceptance Procedure outlined in the SOR (Annex A to the ITT). | 1 (final) | | |
| | Delivery Date Delivered within 20 business days of Contract Award, as per the SOR (Annex A to the ITT). | | | |
| | MOD Stock Ref. No: N/A Contractor Part Number: N/A | | | |
| | Packaging requirements inc. PPQ and DofQ *: N/A | | | |
| 22 | Specification: Technical Data Pack (TDP) Delivered in accordance with Paragraph 11 of the SOR (Annex A to the ITT). | 1 | TBC | TBC |
| | Delivery Date Within 20 business days following the conclusion of the Acceptance Procedure | | | |
| | MOD Stock Ref. No: N/A Contractor Part Number: N/A | | | |
| | Packaging requirements inc. PPQ and DofQ *: N/A | | | |
| | | | | |
| | | | | |
| 22 | Specification: Delivery of the following Plans under the Contract: <ul style="list-style-type: none"> Deliverable Quality Plan Manufacturing Project Plan Risk and Opportunity Management Plan Delivered in accordance with the SOR (Annex A to the ITT). | <ul style="list-style-type: none"> 1 Qty DQP(final) 1 Qty MPP(final) 1 Qty R&OMP (final) | | |
| | Delivery Date Delivered in accordance with the SOR (Annex A to the ITT). | | | |
| | MOD Stock Ref. No: N/A Contractor Part Number: N/A | | | |

| Item No. | Item Details | Total Qty (Sets) | CY 1-3 – Firm Price (£) Ex VAT CY 4-10 –Fixed Price (£) Ex VAT VOP using Output (PPI) Index G72N | |
|----------|---|---|--|--|
| | Packaging requirements inc. PPQ and DofQ *: N/A | | | |
| | Total | 294 Fan sets, plus Plans and Project Management as per the SOR (Annex A). | | |

Total Price Incl. Packaging and Delivery **

*as detailed in
DEFFORM 96
****and Delivery if
specified in Schedule
3 (Contract Data
Sheet)**

Schedule 3 - Contract Data Sheet

| |
|---|
| General Conditions |
| Condition 2 – Duration of Contract: <p>The Contract expiry date shall be: 31st July 2031</p> |
| Condition 4 – Governing Law: <p>Contract to be governed and construed in accordance with:</p> <p>English Law</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 4.g (if applicable) are as follows:</p> <p>N/A</p> |
| Condition 7 – Authority’s Representatives: <p>The Authority’s Representatives for the Contract are as follows:</p> <p>Commercial: Isabelle Hart (as per DEFFORM 111)</p> <p>Project Manager: Mick Conway (as per DEFFORM 111)</p> |
| Condition 18 – Notices: <p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: Vehicle Support Team, MOD Abbey Wood South, NH3 Cedar 1, Mail Point #3157, Bristol, BS34 8JH (as per DEFFORM 111)</p> <p>Contractor: TBC</p> <p>Notices can be sent by electronic mail? Yes</p> |
| Condition 19.a – Progress Meetings: <p>The Contractor shall be required to attend the following meetings:</p> <p>Project Review Meetings (PRMs) - delivered in accordance with the Statement of Requirements (SOR)(Annex A to the ITT).</p> |
| Condition 19.b – Progress Reports: |

The Contractor is required to submit the following Reports:

The Contractor shall deliver the following Reports in accordance with the Statement of Requirements (SOR)(Annex A to the ITT):

- Financial Management Reports (FMRs)
- Work in Progress Reports (WIPs)

Reports shall be Delivered to the following address:

Delivery as stated in the Statement of Requirement, or to Mick Conway

Mick.Conway633@mod.gov.uk

Supply of Contractor Deliverables

Condition 20 – Quality Assurance:

Is a Deliverable Quality Plan required for this Contract? Yes

If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within 30 Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

Other Quality Assurance Requirements:

Please Refer to Condition 44 of the Terms and Conditions

Condition 21 – Marking of Contractor Deliverables:

Special Marking requirements:

N/A

Condition 23 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:

A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:

- a) The Authority's Representative (Commercial)
- b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.uk

to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: 10:00 on the 20th September 2021

Condition 24 – Timber and Wood-Derived Products:

A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the

| |
|---|
| <p>Contract: Data Requirements) is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to the Authority's Representative (Commercial)</p> <p>to be Delivered by the following date: 10:00 on the 20th September 2021</p> |
| <p>Condition 25 – Certificate of Conformity:</p> <p>Is a Certificate of Conformity required for this Contract? Yes</p> <p>Applicable to Line Items: All Fan Delivery Line Items within Schedule 2.</p> <p>If required, does the Contractor Deliverables require traceability throughout the supply chain?</p> <p>Yes</p> <p>Applicable to Line Items: All Fan Delivery Line Items within Schedule 2.</p> |
| <p>Condition 27.b – Delivery by the Contractor:</p> <p>The following Line Items are to be Delivered by the Contractor:</p> <p>All line items within Schedule 2</p> <p>Special Delivery Instructions:</p> <p>N/A</p> <p>Each consignment is to be accompanied by a DEFFORM 129J.</p> |
| <p>Condition 27.c - Collection by the Authority:</p> <p>The following Line Items are to be Collected by the Authority:</p> <p>None</p> <p>Special Delivery Instructions:</p> <p>N/A</p> <p>Each consignment is to be accompanied by a DEFFORM 129J.</p> <p>Consignor details (in accordance with 27.c.(4)):</p> <p>Line Items: All Line Items in Schedule 2 Address: TBC</p> |

| |
|--|
| <p>Line Items: All Line Items in Schedule 2 Address: TBC</p> <p>Consignee details (in accordance with condition 22):</p> <p>Line Items: All Line Items Address: MOD Donnington, Donnington, Telford TF2 8LS</p> <p>Line Items: N/A Address: N/A</p> |
| <p>Condition 29 – Rejection:</p> <p>The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:</p> <p>The time limit for rejection shall be: 12 Months</p> |
| <p>Condition 31 – Self-to-Self Delivery:</p> <p>Self-to-Self Delivery required? No</p> <p>If required, Delivery address applicable:</p> <p>N/A</p> |
| <p>Pricing and Payment</p> <p>Condition 34 – Contract Price:</p> <p>All Schedule 2 line items shall be FIRM Price other than those stated below:</p> <p>Line Items Line Items 1 – 6 & 23 shall be a FIRM Price Line Items 7 – 22 shall be subject to VOP (see Conditions 45.7 and 45.8)</p> <p>Clause 45. - Payment Terms refers</p> |
| <p>Termination</p> <p>Condition 41 – Termination for Convenience:</p> <p>The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:</p> <p>The Notice period for termination shall be 30 Business Days</p> |
| <p>Other Addresses and Other Information (<i>forms and publications addresses and official use information</i>)</p> <p>See Annex A to Schedule 3 (DEFFORM 111)</p> |

Schedule 4 - Contract Change Control Procedure (i.a.w. Clause 6b)

Contract No:

1. Authority Changes

1. The Authority shall be entitled to propose any change to the Contract (a "Change") or (subject to Clause 2) Changes in accordance with this Schedule 4.
2. Nothing in this Schedule shall operate to prevent the Authority from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

2. Notice of Change

- a. If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "Authority Notice of Change") on the Contractor.
- b. The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clauses 7 to 9 (inclusive).
- c. The Contractor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):
 - i. would, if implemented, require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable law relevant to such delivery; and/or
 - ii. would, if implemented, cause any existing consent obtained by or on behalf of the Contractor in connection with their obligations under the Contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Contractor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
 - iii. would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract;
and:
- iv. the Contractor notifies the Authority within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c providing written evidence for the Contractor's reasoning on the matter; and
- v. further to such notification:
 - (1) either the Authority notifies the Contractor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Contractor that the Authority disputes the Contractor's notice under Clause 5.d) it is determined in accordance with Condition 39 (Dispute Resolution), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c; and
 - (2) (where the Authority either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change)

to remove the Contractor's grounds for refusing to implement the relevant Change under Clauses 5.a, 5.b and/or 5.c within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after:

- i) the date on which the Authority notifies in writing the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c); or
 - ii) the date of such determination.
6. The Contractor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

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

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

- 1. either indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract) whereupon the Contractor shall promptly issue to the Authority the Contractor's DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Condition and implement the relevant Change(s) in accordance with such proposal; or
- 2. serve a Notice on the Contractor rejecting the Contractor Change Proposal and

withdrawing (where issued) the Authority Notice of Change. (in which case such notice of change shall have no further effect).

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 in connection with the implementation of any Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 11.a and then subject only to the terms of the Contractor Change proposal so accepted.

5. Contractor Changes

If the Contractor wishes to propose a Change or Change(s), they shall serve a Contractor Change Proposal on the Authority. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Clauses 8 to 13 (inclusive).

Schedule 5 - Contractor's Commercial Sensitive Information Form (i.a.w. condition 13)

Contract No:701547382

| |
|--|
| Contract No: 701547382 - The Procurement of HAAIP Main Engine Cooling Fans |
| 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): |
| <p>Contact Details for Transparency / Freedom of Information matters:</p> <p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Telephone Number:</p> <p>Email Address:</p> |

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

Data Requirements for Contract No: 701547382

**Hazardous Contractor Deliverables, Materials or Substances
Statement by the Contractor**

Contract No:

Contract Title:

Contractor:

Date of Contract:

* To the best of our knowledge there are no hazardous Contractor Deliverables, materials or substances to be supplied.

* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:) attached in accordance with condition 24.

Contractor's Signature:

Name:

Job Title:

Date:

* check box (☒) as appropriate

.....
To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)
Defence Safety Authority (DSA)
Movement Transport Safety Regulator (MTSR)
Hazel Building Level 1, #H019
MOD Abbey Wood (North)
Bristol BS34 8QW

Emails to be sent to:
DESTECH-QSEPEnv-HSISMulti@mod.gov.uk

Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract
Data Requirements for Contract No: 701547382

The following information is provided in respect of condition 24 (Timber and Wood-Derived Products):

| Schedule of Requirements item and timber product type | Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence | Volume of timber Delivered to the Authority with other evidence | Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy | Total volume of timber Delivered to the Authority under the Contract |
|--|--|--|--|---|
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Schedule 8 - Acceptance Procedure (i.a.w. condition 28)

Contract No:701547382

Please refer to Paragraphs 4-9 and Figure 1 (Acceptance Flow Chart) of the Statement of Requirement (SOR) for the Fans Acceptance Procedure.

Schedule 9 - Quality Assurance Conditions

AQAP 2105

NATO Requirements for Deliverable Quality Plans

AQAP 2110

NATO Quality Assurance Requirements for Design, Development and Production.

DEFSTAN 05-061 Pt 1

Quality Assurance Procedural Requirements - Concessions

DEFSTAN 05-061 Pt 4

Quality Assurance Procedural Requirements - Contractor Working Parties

DEFSTAN 05-061 Pt 9

Quality Assurance Procedural Requirements - Independent Inspection Requirements for Safety Critical Items

DEFSTAN 05-135

Avoidance of Counterfeit materiel

Schedule 10 - Earned Value Management (EVM) Requirements

1. The Authority has assessed that Level 5 EVM is required for this contract. The contractor shall conduct EVM reporting in accordance with DEFCON 647 (Financial Management Information) and the below requirements.

Planning, Scheduling and Budgeting

2. The Contractors shall provide a single page EVM plan that reflects the scope of work and time frame required to complete delivery to the Authority. This plan should align to the Schedule of Requirements at Schedule 2.

Analysis and Reporting

3. The Contractor shall provide an in-year spending forecast and shall indicate to the Authority within five days if at any time the Contractor expects that the funds required to complete the contract will exceed the agreed contract value. Additionally, if the funds required within any fiscal year are expected to exceed the amount authorised by the Authority, the Contractor shall notify the Authority within no more than five days.

DEFFORM 111

DEFFORM 111

Appendix - Addresses and Other Information

1. Commercial Officer

Name: Isabelle Hart

Address: Vehicle Support Team , MOD Abbey Wood South, NH3 Cedar 1, Mail Point #3157, Bristol, BS34 8JH

Email: isabelle.hart100@mod.gov.uk ☎☎ +44 3001586279

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

Name: Mick Conway

Address Vehicle Support Team , MOD Abbey Wood South, NH3 Cedar 1, Mail Point #3157, Bristol, BS34 8JH

Email: Mick.conway633@mod.gov.uk ☎☎ +44 3001548046

3. Packaging Design Authority Organisation & point of contact:

Mick Conway

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

☎☎ +44 3001548046

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

Branch/Name: +44 3001548046

☎☎ N/A

(b) U.I.N. D0395S

5. Drawings/Specifications are available from Mick Conway

6. Intentionally Blank

7. Quality Assurance Representative: Carl Rooney - Carl.Rooney668@mod.gov.uk

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

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.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: As per Schedule 3

10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

B. JSCS

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

JSCS Fax No. 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact DESWATERGUARD-ICS-Support@mod.gov.uk in the first instance.

11. The Invoice Paying Authority

Ministry of Defence, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

☎☎ 0151-242-2000 Fax: 0151-242-2809

Website is: <https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

12. Forms and Documentation are available through *:

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

Applications via fax or email: Leidos-FormsPublications@teamleidos.mod.uk

*** NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

Deliverables

Deliverables Note

This matrix is intended to provide an overview of the parties' contractual obligations to assist with contract management. It does not form part of the contract and should not be relied upon

to aid interpretation of the contract. In the event of any conflict, inconsistency or discrepancy between this matrix and the contract, the terms of the contract shall take precedence.

Negotiation Deliverables

Not applicable.

Supplier Contractual Deliverables

Supplier Contractual Deliverables

| Name | Description | Due | Responsible Party |
|--|--|-----|-----------------------|
| Obligation Condition 35.c - Payment | no later than 30 days from receipt of valid undisputed invoice | | Supplier Organization |
| Obligation Condition 36.c - Notification of applicable VAT | Notification of VAT liability or changes to it | | Supplier Organization |
| Obligation Condition 41.c.(2) - Post notification of Termination | List of Unused and undamaged materiel; contractor deliverables in the course of manufacture. | | Supplier Organization |
| Obligation Condition 5.b - Notice of inconsistency between contract documents | If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith | | Supplier Organization |
| Obligation Condition 17.a - Contractors Records (reminder) | maintain all records in connection with the Contract for a period of at least six (6) years | | Supplier Organization |
| Obligation DEFCON 21 (Edn 10/04) Clause - 3a - Maintenance of Deliverables (reminder) | To maintain at least one copy of all deliverable information to which DEFCON 21 applies during the period of the Contract and for at least two years after the Contract, or period as may be specified in the contract. | | Supplier Organization |
| Obligation Condition 19.a - Attendance at Progress Meetings | attend progress meetings at the frequency or times specified in the contract | | Supplier Organization |
| Obligation Condition 19.b - Progress Reports | submit progress reports at the times and in the format specified in the contract | | Supplier Organization |
| Obligation Condition 15.a - Change of Control of Contractor | Written Notification of any intended, planned or actual change in control of the Contractor, including any Sub-contractors. | | Supplier Organization |
| Obligation Condition 15.b - Notification of Concern due to Change of Control | advise the Contractor in writing of any concerns due to Change of Control | | Supplier Organization |
| Obligation Condition 22.e, 22.a, and 22.c - Safety Data Sheet | provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverable containing such. | | Supplier Organization |
| Obligation Condition 22.f.(6) And Condition 22.g.(1).(b) - Documents relating to design of new MLP Packaging | "All SPIS, new or modified, shall be uploaded by the on to SPIN. where the Supplier is the PDA and registered a list of all SPIS which have been prepared or revised against the Contract; and a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings shall be provided for upload" | | Supplier Organization |
| Obligation Condition 23.d - Schedule 6 | a completed Schedule 6 (Hazardous Contractor | | Supplier Organization |

| | | | |
|--|---|--|-----------------------|
| hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements | Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) | | |
| Obligation Condition - Compliance with hazard reporting requirements for materials or substances are ordnance, munitions or explosives | in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems. | | Supplier Organization |
| Obligation Condition 24.c - Source of Timber and Wood | If requested Evidence that the Timber and Wood-Derived Products supplied to the Authority comply with the requirements of clause 25.a or 25.b or both. | | Supplier Organization |
| Obligation Condition 25.a - Certificate of Conformity | Provide a Certificate of Conformity and any applicable Quality Plan | | Supplier Organization |
| Obligation Clause Condition 41.f - Subcontract Termination | inclusion of Termination clause in subcontracts over £250,000 | | Supplier Organization |
| Obligation Condition 1.c.(2) - Notification of litigation | Notification of; Litigation, arbitration, administrative, adjudication or mediation proceedings against itself or a Subcontractor | | Supplier Organization |
| Obligation Condition 1.c.(4) - Notification of Winding-up | Notice of any proceedings or steps taken for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, | | Supplier Organization |

Buyer Contractual Deliverables

Buyer Contractual Deliverables

| Name | Description | Due | Responsible Party |
|---|---|-----|--------------------|
| Obligation Condition 32.a 32.i - Import Export Licence Information | sufficient information, certification, documentation and other reasonable assistance to obtain necessary UK import/export licence or to facilitate the granting of export/import licences or authorisations by a foreign Government | | Buyer Organization |
| Obligation Condition 32.l - Notification of restrictions in use due to non-UK licence | If all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable | | Buyer Organization |
| Obligation Condition 35.a - Register on CP&F | provide details for registration on CP&F | | Buyer Organization |

OFFICIAL SENSITIVE COMMERCIAL

| | | | |
|---|---|--|--------------------|
| Obligation Condition 41.a - Termination | Written notice of Termination of part or whole of contract | | Buyer Organization |
| Obligation Condition 7.c - Change in Authority Representatives | Written confirmation of any change to the Authorities Representatives | | Buyer Organization |
| Obligation Condition 34.f.(6) - Use of confidentiality agreement | Disclosure of Information on a confidential basis shall be subject to a confidentiality agreement containing terms no less stringent than those placed on the Authority | | Buyer Organization |
| Obligation Condition 5.b - Notice of inconsistency between contract documents | If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith | | Buyer Organization |

Specifications

Annex A to the ITT - Statement of Requirement (SOR)

Please refer to External document for Annex A to the ITT.

Annex B to the ITT - Technical Evaluation Spreadsheet

Please refer to External Excel Spreadsheet for Annex B to the ITT

Annex C to the ITT - Key Performance Indicators (KPIs)

Please refer to External Document for Annex C to the ITT.

Annex D to the ITT – Performance Measurement Annex

Please refer to the external spreadsheet version of Annex D.

Annex E to the ITT– DEFFORM 315

Please refer to the external document version of Annex E.

Annex F to the ITT– DEFFORM 316

Please refer to the external document version of Annex E.

Annex G to the ITT – Security Aspects Letter (SAL)

Please refer to the external document for Annex G

Annex H to the ITT – GFA Annex

Please refer to the external document for Annex H

Annex I to the ITT – DEFFORM 129J

Please refer to the external document version of Annex E.