



Ministry  
of Defence

**Army HQ BFG Commercial Team**

**Contract No: CBBFG/0110B**

**For:**

**Provision of Post Warranty  
Support for the MAN Support  
Vehicle Fleet in British Forces  
Germany**

**Between Secretary of State for Defence of the  
United Kingdom of Great Britain and Northern  
Ireland**

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# **MOD Conditions for the Provision of Services: Contract No: CB/BFG/0110 (B)**

## **A General Contract Provisions**

### **A1. Interpretation**

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

### **A2. Amendments to Contract**

- a. All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not Minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2.a above has been issued.

### **A3. Variations to Specification**

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition A2 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.
- b. Any variations that cause a change to:
  - (1) fit, form, function or characteristics of the Contractor Deliverables;

- (2) the cost;
- (3) Delivery Dates;
- (4) the period required for the production or completion; or
- (5) other work caused by the alteration,

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

#### **A4. Precedence**

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

- (1) Sections A - H (and J - L, if sections J - L are included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
- (2) Schedule 2 (Schedule of Requirements) and, where included, Schedule 8 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause A4.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause A4.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition A21 (Dispute Resolution).

#### **A5. Severability**

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

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

#### **A6. Assignment of Contract**

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

#### **A7. Waiver**

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

#### **A8. Third Party Rights**

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

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

## **A9. Governing Law**

a. Subject to clause A9.d, the Contract shall be considered as a contract made in England and subject to English Law.

b. Subject to clause A9.d and A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Subject to clause A.9.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under English jurisdiction.

d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause A9.a, A9.b and A9.c shall be amended to read:

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

b. Subject to clause A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

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

“In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

f. Each Party agrees with each other Party that the provisions of this clause A9 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any

litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

#### **A10. Entire Agreement**

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

#### **A11. Disclosure of Information**

a. Subject to clauses A11.d, A11.e, A11.h and A14 each Party:

- (1) shall treat in confidence all Information it receives from the other;
- (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
- (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
- (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses A11.a and A11.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses A11.a and A11.b shall not apply to any Information to the extent that either Party:

- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
- (3) can show:
  - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
  - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
  - (c) that the Information was received without restriction on further disclosure

from a third party which lawfully acquired the Information without any restriction on disclosure; or

(d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

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

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

f. The Authority may disclose the Information:

(1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

(2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;

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

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

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

g. Before sharing any Information in accordance with sub-clause A11.f above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

## **A12. Publicity and Communications with the Media**

The Contractor shall not, and shall ensure that any employee or Subcontractor shall not, communicate with representatives of the press, television, radio or other media on any matter

concerning the Contract unless the Authority has given its prior written consent.

### **A13. Protection of Personal Data**

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

### **A14. Transparency**

a. Subject to clause A14.b but notwithstanding condition A11, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with clause A14.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 6 (Contractor's Commercially Sensitive Information).

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A14.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this condition A14 shall affect the Contractor's rights at law.

### **A15. Equality**

a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

b. Without prejudice to the generality of the obligation in clause A15.a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent Legislation in the country where the Contract is being performed.

c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this condition A15 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.

d. The Contractor agrees to take reasonable efforts to reflect this condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

### **A16. Child Labour and Employment Law**

a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.

b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

### **A17. Subcontracting**

a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation,

duty or liability attributable to the Contractor under the Contract.

b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.

c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:

(1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and

(2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.

d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience in the event that the Authority exercises its right to terminate this Contract under Condition A22 (Termination for Convenience), with twenty (20) Business Days notice (or such other notice period as the Authority shall give under this Contract).

e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX, United Kingdom (Telephone : 0044 1204 880733) or <http://business.base-uk.org/procurement>.

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

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

#### **A18. Change of Control of Contractor**

a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol BS34 8JH, United Kingdom as soon as practicable of any intended, planned or actual change of Control. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

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

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

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

## **A19. Termination for Insolvency or Corrupt Gifts**

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

### **Insolvency:**

a. where the Contractor is an individual:

(1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the "IA 86") or the court making an interim order pursuant to Section 253 of the IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the "DAAS Act") is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;

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

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

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

(a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;

(b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;

(c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or

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

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

b. where the Contractor is a firm:

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

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) any event listed in clause A19.a occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor;

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

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

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

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

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

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

(10) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

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

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

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

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

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

(2) any composition, compromise, assignment, assignation or arrangement is made

with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;

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

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

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

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or

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

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

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

#### **Corrupt Gifts**

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

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

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or

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

(2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;

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

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

- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
- (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
  - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
  - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

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

## **A20. Consequences of Termination**

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

## **A21. Dispute Resolution**

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

## **A22. Termination for Convenience**

- a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.
- b. In the event that the Authority exercises its rights in accordance with clause A22.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.
- c. The Authority's total liability under clause A22.b shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

## **A23. Contractor's Records**

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition A11 (Disclosure of Information), make them

available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years from:

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

whichever occurs latest.

#### **A24. Duration of Contract**

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

#### **A25. Contractor's Warranties**

a. The Contractor warrants and represents, that:

- (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
- (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
- (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- (4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

### **B The Contractor Deliverables**

#### **B1. Supply of Contractor Deliverables and Quality Assurance**

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

b. The Contractor shall:

- (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables;
- (2) comply with all applicable Legislation; and
- (3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

c. The provisions of clause B1.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

d. The Contractor shall:

(1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;

(2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and

(3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

## **B2. Environmental Requirements**

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

## **B3. Disruption**

a. The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

b. The Contractor shall inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and certainly no later than seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.

c. The Contract shall have robust contingency plans in place to ensure that, in the event of industrial action by the Contractor's Team, provision of the Contractor Deliverables is maintained and such contingency plans shall be available for the Authority to inspect and / or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the contract period.

## **C Price**

### **C1. Contract Price**

a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).

b. Subject to condition G2 the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

## **D Intellectual Property**

### **D1. Third Party Intellectual Property – Rights and Restrictions**

a. The Contractor shall promptly notify the Authority as soon as they become aware of:

(1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

(2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes

of the Contract or subsequent use by the Authority of anything Delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;

(3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause D1.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a commercial off the shelf (COTS) item or service.

b. If the Information required under clause D1.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This clause shall not apply if:

(1) the Authority has made or makes an admission of any sort relevant to such question;

(2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;

(3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

(4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause D1.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

g. If, under clause D.1a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

(1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

(2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

(1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause D1.a.

k. Where authorisation is given by the Authority under clause D1.e, D1.f or D1.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

(2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

(3) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in

respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

(2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

(1) Clauses D1.a – D.1.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;

(2) Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;

(3) A Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;

(4) The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) Following a notification under clause D1.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

(6) The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in condition D1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

## **E Facilities And Assets**

### **E1. Access to Contractor's Premises**

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

## **F Delivery**

### **F1. Authority's Remedies for Breach of Contract**

a. If the Contractor:

(1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant

date specified in Schedule of Requirements and / or the Specification;

(2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;

(3) supplies Contractor Deliverables that do not comply with clause B1.b;

(4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with condition A18, or fails to supply or withholds the Information required under clause A18.a;

(5) commits a persistent failure by failing to meet either:

(a) a single Key Performance Indicator (KPI) on 2 or more occasions in a rolling 3 month period; or

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

(6) otherwise commits a material breach of its obligations under the Contract,

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

(7) where the Contractor commits a persistent failure in accordance with clause F1.a.(5) or where the breach is material in accordance with clause F1.a.(6), to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;

(8) refuse to accept the provision of any further Contractor Deliverables by the Contractor and the Contractor shall refund to the Authority any sums paid in respect of the Contractor Deliverables that fail to comply with the terms of the Contract;

(9) give the Contractor the opportunity at the Contractor's expense to carry out such remedial services as is necessary to correct the Contractor's failure or otherwise to rectify the breach within the Authority-specified time limits;

(10) purchase substitute services from elsewhere;

(11) claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

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

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

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

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

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

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

## G Payment And Receipts

### G1. Payment

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

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

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

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

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

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

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

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

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

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

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

~~(2) forwarding the completed AG173 / AG210 signed by the Authority, together with a properly completed DAB Form 10.~~

f. The Authority shall pay all valid, properly completed claims for payment submitted by the Contractor to DBS Finance in accordance with clause G1.e on or before the day which is thirty (30) days after the later of:

(1) the day upon which a valid request for approval of payment is received by the Authority in accordance with clause G1.c; and

(2) the date of completion of the part of the Contract to which the request for approval of payment relates.

~~g. Where using the AG173 (or AG210), the period of thirty (30) days referred to in clause G1.f shall be exclusive of the number of days that elapse between the date the Contractor receives a MOD Form 640 or AG173 (or AG210) from the Authority showing payment approval in accordance with clause G1.d and the date DBS Finance receives a valid, properly completed claim for payment in accordance with clause G1.e.~~

h. The approval of payment by the Authority under clause G1.d shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under condition F1 or otherwise.

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

## **G2. Value Added Tax**

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the provision of any Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).

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

d. Where the provision of any Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables.

## **G3. Debt Factoring**

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A6 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition G3 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause G1.i;
- (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both clauses G3.b and G3.c.(2).

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause G3.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

- c. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under clauses G3.a.1 and G3.a.2; and
  - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses G3.a.(1) and G3.a.(2).
- d. The provisions of condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

## **H Contract Administration**

### **H1. Progress Monitoring, Meetings and Reports**

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
- (1) performance/Delivery of the Contractor Deliverables;
  - (2) risks and opportunities;
  - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
  - (4) any other information reasonably requested by the Authority.

### **H2. Authority Representatives**

- a. Any reference to the Authority in respect of:
- (1) the giving of consent;
  - (2) the delivering of any Notices; or
  - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this condition H2.

b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition A2 (Amendments to Contract).

### **H3. Notices**

- a. A Notice served under the Contract shall be:
- (1) in writing in the English Language;
  - (2) authenticated by signature or such other method as may be agreed between the

Parties;

(3) sent for the attention of the other Party's representative, and to the address set out in Schedule 3 (Contract Data Sheet);

(4) marked with the number of the Contract; and

(5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

(1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;

(2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;

(3) if sent by facsimile or electronic means:

(a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

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

**DEFCON611(SC3) (Edn.02/16) – Issued Property**

**General**

1. All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.

2. Neither the Contractor, nor any subcontractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, subcontractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all subcontractors and other persons dealing with any Issued Property.

**Receipt**

3. Subject to Clauses 4 and 7 below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the Contract, the Contractor shall:

a) check the Issued Property to verify that it corresponds with the Issued Property specified in the Contract;

b) conduct a reasonable visual inspection; and

c) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;

and notify the Authority of any defects, deficiencies or discrepancies discovered.

4. Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 3 above shall count from the date on which packages are opened.

5. The Authority shall within a reasonable time after receipt of any notice under clause 3 of this Condition replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

6. In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 3, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

7. Clauses 3 - 6 do not apply in the following circumstances:

- a) where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the Contract;
- b) where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the Contract;
- c) where Special Jigs and Tools etc. become Issued Property under DEFCON 23 (SC3).

#### Custody

8. Subject to Clause 11 below and any limitation or exclusion of liability as may be specified in the Contract, the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in Clause 14.

9. The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Contract.

10. If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.

11. The Contractor shall not be liable in respect of:

- a) defects or deficiencies notified to the Authority in accordance with Clause 3 of this Condition or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 3 of this Condition;
- b) fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
- c) Issued Property rendered unserviceable as a direct result of ordinary performance of the Contract;
- d) any loss or damage to Issued Property arising from:
  - i. aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
  - ii. ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
  - iii. the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;

- iv. riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

#### Accounting and Return of Issued Property

12. The Contractor shall:

- a) open and maintain a Public Store Account (PSA) in accordance with DEF STAN 05-099.
- b) ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time;
- c) on being given two months notice or such other period as has been stated in the Contract permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority; where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue then these audits may be conducted without notice.

13. Once title in Special Jigs, Tools etc has passed to the Authority in accordance with Clause 6 of DEFCON 23 (SC3) the Contractor shall record that equipment in the PSA in accordance with DEF STAN 05-099.

14. At Contract completion the Contractor shall forward a list of Issued Property still held to the Authority's Commercial Officer named in the Contract. Return or disposal of such Issued Property will be as specified in the Contract, or as instructed by the Authority at Contract completion. If no disposal instructions are specified in the Contract the Authority shall provide such instructions within two months of the Contractor's written request to do so.

#### **DEFCON624(SC) (Edn.03/15) - Use of Asbestos**

##### Definitions

1. "Asbestos" shall have the same meaning as "asbestos" defined in Regulation 2 of the Control of Asbestos Regulations 2012 (COAR).

##### Prohibition of Asbestos

2. Subject to Clauses 4 and 5 below, no asbestos of any type shall be incorporated into any Articles (as defined in SC2 and/or SC3 Conditions of Contract Schedule 1) or other material to be supplied under the Contract.

##### Notification

3. The Contractor shall notify the Authority in writing as soon as they become aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of the Contract.

##### Exemption

4. The Secretary of State may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 (the Regulations) exempting the Contractor from parts of the Regulations. The Contractor may incorporate Asbestos into Articles and / or material supplied, or use or process it in the performance of services under the Contract in accordance with the conditions set out in the Certificate.

5. If at any stage during the lifetime of the Contract, an alternative substance becomes available, the Contractor shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the Contractor and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Articles or material which have yet to be supplied under the Contract. The Authority may require the Contractor to suspend any further production of such Articles or

material or delivery of services, pending such determination, thereby relieving the Contractor (for the time being) of any contractual obligations to provide such Articles, material or services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of services in lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.

6. If, at any stage during the lifetime of the Contract, the Secretary of State issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the Regulations, the effect of which is that any further supply of the Articles or delivery of services under the Contract would be prohibited by the Regulations, the Contractor shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing the service and shall provide the Authority with written confirmation of this within forty-eight hours. The Authority reserves the right to vary its requirements in the light of any such decision.

7. Where the Contract is for the provision of a service, the Contractor shall obtain from the Health and Safety Executive or the Secretary of State for Defence as appropriate, an exemption from the requirements of the COAR under Regulation 29 or 30 where an exemption is necessary for performance of the contract.

### **DEFCON630(SC) (Edn.03/15) - Framework Agreements**

#### **Definitions**

1. In this Condition:

a) "Framework Agreement" means an agreement or other arrangement between the Authority or the Authority and one or more other contracting authorities, and one or more contractors that establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the contractor(s) will enter into one or more contracts with the Authority in the period during which the Framework Agreement applies.

b) "Authorised Demander" means the person(s) authorised by the Authority to place orders or tasks being the person(s) listed in the Framework Agreement.

#### **Standing Offer**

2. In consideration for the payment of the sum of €1 (one euro) by the Authority to the Contractor, the Contractor shall not for the duration of the Framework Agreement withdraw from or amend in any way the standing offers contained in the Framework Agreement except by agreement in accordance with Conditions of Contract Condition A2.

#### **Duration Period**

3. The duration period of this Framework Agreement was stated in the Contract Notice and shall start from the date specified at A.24. This period, shall be the period in which Contractor Deliverables may be ordered and / or tasks authorised by the Authority under the Framework Agreement. The fulfilment of such orders or tasks may take place after the end of the duration period in accordance with the terms of the orders or tasks.

#### **Estimated Quantities**

4. Where applicable, the quantities referred to in Schedule 2, the Schedule of Requirements (SOR) are estimates only. The Authority may order more or less than the estimated quantities and shall not be bound to place orders or tasks for any of the Contractor Deliverables referred to in the SOR. The Authority shall not be bound to accept or pay for any Contractor Deliverables other than those actually ordered and/or authorised under the terms of the Framework Agreement.

#### **Alternative Sourcing of Contractor Deliverables**

5. The Contractor(s) accept that, subject to the Authority having necessary rights, the Authority has the right to award contracts separate from this Framework Agreement for any or all of the Contractor Deliverables listed in the SOR during the period of the Framework Agreement.

Orders or Tasks (Contracts) for Contractor Deliverables placed or awarded under the Framework Agreement

6. A Contract for the Contractor Deliverables shall only be created when either the Authorised Demander(s) places an order for each requirement, communicating an unqualified acceptance of the Contractor's standing offer or when the Contractor communicates its unqualified acceptance to the Authority for any tasks awarded by the Authorised Demander(s) under the Framework Agreement by the means specified in the Framework Agreement.

7. Where the Framework Agreement does not specify the means by which the Authority will place orders and / or award tasks (contracts) under the Framework Agreement, the Authority will comply with:

- a) the procedures for the award of contracts set out at Regulation 20 of the Defence and Security Public Contracts Regulations (DSPCR) 2011 or any successor, where applicable;
- b) the procedures for the award of contracts set out at Regulation 33 of the Public Contracts Regulations (PCR) 2015 or any successor, where applicable; or
- c) if the PCR and DSPCR do not apply, the principles of non-discrimination and equal treatment for any Contractor party to the Framework Agreement subject to any essential security measures that the Authority may adopt under Article 346 Treaty on the Functioning of the European Union.

8. Occasionally, and subject to the agreement of both parties to the Framework Agreement, an order or task may contain specific terms or conditions additional to those contained in the Framework Agreement or which are at variance to those contained in the Framework Agreement.

9. The order or task shall expressly reference the Framework Agreement, and shall be in the format specified in the Framework Agreement.

10. The Contractor shall deliver the Contractor Deliverables within the times specified in the Framework Agreement or as otherwise agreed between the parties in accordance with the provisions of the Framework Agreement. If it becomes obvious that the Contractor Deliverables will not be delivered within the specified timescale, the Contractor shall immediately notify the Authority of the cause of the delay together with a forecast delivery date. Such information shall be supplied without prejudice to the Authority's rights under the Framework Agreement.

11. In the event that the Authority agrees to a revised delivery date it shall immediately issue an amendment to the applicable order in accordance with the provisions of Standardised Contracting Templates 2 and 3 Condition A2.

12. All correspondence issued by the Contractor shall be directed to the addressee specified in the Framework Agreement or, if no addressee is specified, to the project manager, equipment support manager or project team leader named in Annex A to Schedule 3 appended to the Framework Agreement. In each case, a copy shall be sent to the applicable commercial officer.

13. The Contractor shall either accept or reject an order or task within the period specified in the Framework Agreement or, if no period is specified in the Framework Agreement, within ten business days.

14. Where an order or task has been rejected by the Contractor, the Contractor shall specify in writing the reason for the rejection.

15. Each order or task issued by the Authority and each quotation, order, task acceptance and rejection issued by the Contractor shall be issued in the manner specified in the Framework Agreement. If the Framework Agreement does not specify the means by which an order or task is to be issued then the provisions of Clause A1 b.(7) of Standardised Contracting Templates 2 and 3 shall apply.

### **DEFCON637(SC) (Edn.03/15) - Defect Investigation and Liability**

1. The procedure for the reporting, investigation and rectification of all defects whether or not they relate to design, software or manufacturing shall be as agreed between the Contractor and the Authority.
2. Where it is established that, pursuant to the Contract or any other contract relating to the Articles, the Contractor bears the liability for any of the costs of investigating, repairing or rectifying a defect, the costs of any such work undertaken by the Contractor shall be borne by the Contractor.
3. If liability for the defect is in dispute, the Contractor shall separately identify and record all related costs.
4. Any Article, and work thereon, which after examination is required to be rectified / repaired at the Authority's or Contractor's expense (or if liability is in dispute) is to be notified to the Project Team (PT) Project Manager or Equipment Support Manager prior to any work being put in hand or transfer to any other contract placed by the Authority, e.g. for repair, overhaul and / or modification.
5. The Contractor shall submit to the Commercial Staff a tasks list, in duplicate, countersigned by the IPT Project Manager / Equipment Support Manager, of the Articles or work which have been investigated / rectified. The list shall be submitted in accordance with the timescales laid down in the Contract and if none is specified within four weeks of completion of all work. The list shall include:
  - a) the description, including, where appropriate, the Stores Reference Number and Serial Number of all Articles or work investigated;
  - b) the description of all other tasks (e.g. design of modification, amendments of drawings);
  - c) against each Item, whether liability has been accepted by the Authority or the Contractor, or is still to be determined, quoting dates and references of relevant correspondence;
  - d) against each Item, the Contract Number and Item Number against which repair, overhaul and / or modification of the Articles has been or will be carried out;
  - e)
    - i. the Serial Number of the MOD Form 640; or
    - ii. the Unique Order Identifier; and
  - f) where overhaul, repair or modification has already been completed, either:
    - i. the Serial Number of the MOD Form 640 for any work for which he has already accepted liability; or
    - ii. the Unique Order Identifier for any work for which he has already accepted liability.

### **DEFCON694(SC3) (Edn.03/16) - Accounting For Property of the Authority**

1. The Contractor shall:
  - a) Maintain a Public Store Account (PSA), as defined in DEFSTAN 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 2, and record for that property all transactions or other accounting information specified at Annex A to this Condition;
  - b) Supply to the Authority quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in

DEFSTAN 05-099. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under the Contract;

- c) ensure that the PSA is available for inspection by the Authority at any reasonable time;
- d) on being given two months notice or any other period as has been stated in the Contract permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority; where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
- e) retain the PSA for a period of three years after disposal of the last item of the property of the Authority, or for any other period as may be specified in the Contract;
- f) if the Authority agrees that a subcontractor at whatever level of subcontracting shall have responsibility in the subcontractor's PSA for property of the Authority issued in aid of the Contract, the Contractor shall include in any subcontract with those subcontractors only the provisions corresponding to those set out in this Condition that apply to property of the Authority issued in aid of the subcontract, in particular Clauses 1, 2, 4 and 7; and
- g) manage the Government Furnished Assets (GFA) component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to the SC3 Conditions of Contract Clause: "Variations to Specification" within three months of the publication date of the new edition. These amendments shall not have retrospective effect.

2. For the purposes of this Condition 'property of the Authority' means GFA and fixed assets, including property issued under DEFCON 611(SC3) and property of the Authority issued to the Contractor under any other authorising document except for property vested in the Authority under Clause 1 of DEFCON 649 (SC3).

3. For the avoidance of doubt, it is a condition of this Contract that this Condition shall apply to all property issued to the Contractor from the date of this Contract, whether in aid of the Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the date of this Contract may be subject to separate contractual arrangements.

4. The obligations of the Contractor arising under this Condition in respect of property of the Authority issued in aid of the Contract shall survive completion of the Contract and shall not be completed until all such obligations are fulfilled including the provisions of sub-Clause 1.e).

5. The obligations of the Contractor arising under this Condition in respect of property of the Authority unconnected with the Contract shall survive completion of the Contract and shall not be completed until all those obligations are fulfilled including the provisions of sub-Clause 1.e) unless and until a subsequent contract containing DEFCON 694 (SC3) is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with the Contract shall be subsumed in the subsequent contract.

6. If, after completion of the Contract, no subsequent contract is placed containing DEFCON 694 (SC3) within the period detailed at sub-Clause 1.e), then the obligations of the Contractor arising under this Condition in respect of property of the Authority unconnected with the Contract shall cease on expiry of the period detailed at sub-Clause 1.e).

7. The Authority reserves the right to amend Annex A without further consultation where the amendments arise from the Department's proper and reasonable accounting requirements. For the purposes of this Clause, Annex A shall be regarded as a Specification and subject to the terms of the SC3 Conditions of Contract Clause: "Variations to Specification". If the Authority exercises this right:

- a) the Contractor shall implement the amendment to Annex A at the commencement of the Department's next accounting year provided that a notice of six months or such

other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and

b) the Contractor shall inform the Authority as soon as practicable, but in any event within three months of notice having been given, if the Contractor cannot comply with the amendment to Annex A.

### **ANNEX A TO DEFCON 694 (SC3)**

#### **Accounting for Property of the Authority – Data and Format Requirements for PSA Records**

##### **Format**

1. The Contractor is not obliged to maintain and report on its PSA records in a format that is different from its original records. Electronic formats are the preferred format for reporting under sub-Clause 1.b. of this Condition. If electronic formats are used for reporting, the following formats are acceptable:

- a) Single MS Access Table;
- b) Unformatted MS Excel Spreadsheet.

2. Other electronic formats may be suitable, subject to agreement with DBS Finance ADMT - see Box 8 of DEFFORM 111 for points of contact. Reports required under sub-Clause 1.b. of this Condition are to be submitted to DBS Finance ADMT - see Box 8 of DEFFORM 111.

##### **Item Record Information**

3. A record is required for each item of GFA held by the Contractor from information available to the Contractor provided by the Authority and from the Contractor's own inventory management systems.

<b>Serial</b>	<b>Name</b>	<b>Description</b>	<b>Comments</b>
<b>KEY DATA FIELDS</b>			
1a	NATO Stock Number (NSN)	The NSN is to be provided in 3 separate fields. i.e.	The NSN is a 13 digit number assigned to an Item of Supply. It consists of the 4 digit NATO Supply Classification (NSC) and the 9 digit National Item Identification Number (NIIN) i.e. Nation Code (NC) + IIN.  "Dummy" reference numbers should not be used.
1b		NSN (4 digits)	
1c		NC (2 digits)	
		IIN (7 digits)	
2	Contract Number or identification or authorising document or responsible MOD official's details if there is no contract	Contract Number under which the contractor holds GFA.	If an item is issued against or transferred to a new Contract or other authorising document, Serial 2 details should be updated. The preceding Contract No field is to be completed at Serial 89
3	Terms of Issue/Loan Type	Contract Work Item (CWI); Contract Work Arising (CWA); Contract Support Item (CSI); Contract Embodiment Item (CEI).	This is the loan category indicating why industry is holding the asset.
4	Part Number	The Original Equipment Manufacturer's part number for the item	Essential if Serial 1 information is not available. A serial number or unique sequence number should be identified for high value stock items.  For JTTE insert Tool No.

GENERAL DATA FIELDS			
5	Domestic Management Code/Inventory Management Code (DMC/IMC)	Unique Identifier used to further identify the main equipment to which an item belongs.	Domestic management Code examples are: IMC (Sea): 0613 DMC (Land): 1VSM DMC (Air): 10S Note: No DMC/IMC starts with a 0 (zero)
6	Description	A description of the Asset	The description on the issuing paperwork should be used
7	Unit Of Measure	Each, Pack, etc. for each line	Otherwise known as Denomination of Quantity
8	Preceding Contract No		To be completed if an item is transferred to a new-succeeding contract
9	JTTE Indicator	"Yes" indicator to reflect that JTTE has passed from DEFCON 23 (SC3) to DEFCON 611 (SC3)	This indicator is to be flagged when the contractor moves an item off the DEFCON 23 (SC3) Register and lists the item in the PSA.
10	Prime Contractor	The Prime Contractor AAC Code should be detailed where the item is being reported by a self-accounting subcontractor	
11	Disposal Indicator	Highlights an item which requires disposal: 1 – Obsolete 2 – Surplus 3 – Disposal instructions requested 4 – Disposal instructions received	May relate to an item identified as obsolete or surplus to requirements, or for which disposal instructions have been received.
12	Asset Location	The name of the Site where the contractor holds the item. This description only needs to detail the name of the site and should not exceed 30 characters.	This field only needs to be populated if the asset is held on a site other than the primary site as the primary site is fixed to the AIMS Number.
13	Remarks		Any remarks pertinent to the item or that will better identify ownership

### Transactional Information

4. Transactional information enables Resource Accounting and Budgeting compliant accounting and informs decisions on future requirements and any assessment for disposal, either to scrap or return to a MOD Depot or Unit. A transactional information record is required for each item held by the Contractor, comprising Serial Nos. 1, 2, 3 and 4 identified as the **Key Data Fields**, which will form the unique record identifier that will be used by the Assets in Industry Data Centre. No aggregation of individual line entries is required to be undertaken by the Contractor for transactional returns.

Serial	Name	Description	Comments
<b>KEY DATA FIELDS</b>			
14	Opening Balance Data	Reporting period start date	
15	Quantity Embodied		Only to be recorded when the item has been embodied in the end product, i.e. at the point in time when the item loses its own identity.
16	Quantity Returned to MOD		This is to include quantity of items returned to MOD under cover of MOD Form 640 or MOD Form 650.
17	Quantity Disposed		This is to include quantity of items scrapped on site or lost in shops (MOD Form 650A), and items authorised for disposal through DSA or otherwise.
18	Quantity Issued – Other		Any other issue of items not covered by serial 14, 15 or 16. The reason for the issue/ transfer is to be recorded in the remarks field.
19	Quantity Received		
20	Stocktaking Adjustments	Stock Adjustments (Qty) as	

		a result of stocktaking losses or gains	
21	Closing Balance	The total quantity in stock at the close of the reporting period	
22	Closing Balance Date	Reporting period end date	

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

**K1. Rejection**

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.

b. Rejection of any of the Contractor Deliverables under clause a. shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified within 20 (twenty) Business Days.

**K2. Delivery/Collection**

a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor in location 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 box 2 of DEFFORM 111 at Annex A to 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 shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;
- (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 for Associated Goods) 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 as detailed in box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
- (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;

(4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet) by the Delivery Date between the hours agreed by the Parties; and

(5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).

d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:

(1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause b.; or

(2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause c.

### **K3. 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 its 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 a time as it is handed over to the Authority.

### **K4. Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in SC3 Core Plus Schedule "Acceptance Procedure". If no acceptance procedure is so specified acceptance shall occur when either:

(1) the Authority does act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or

(2) the time limit in which to reject the Contractor Deliverables defined in the clause K1b. of the SC3 condition "Rejection" has elapsed.

### **K5. Overseas Expenditure**

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

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

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

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

- (1) Overseas firms and

(2) UK firms, including UK branches or subsidiaries of Overseas firms, for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.

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

#### **K6. Import Licences**

If, in the performance of the Contract, the Contractor needs to import materiel into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

#### **K7. Duties and Taxes**

Further to condition G2 (Value Added Tax) prices shall be exclusive of duties and taxes in accordance with Article XI of the NATO Status Of Forces Agreement (SOFA) and Articles 65 and 67 of the Supplementary Agreement thereto. The Contractor is responsible for processing the necessary documentation with the relevant authorities.

#### **K8. Key Performance Indicators and Performance Management**

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

#### **K9. Travel and Subsistence**

Travel and Subsistence (T&S), using the rates detailed within Schedule 7 Pricing, may be claimed in respect of the:

- a. Contractor. If the Authority requests the Contractor to carry out work beyond the Geographical Location they submitted a Tender (i.e. not their geographical working area), the Contractor may request T&S if:
  - i. 5 hours or more is spent away from their normal place of work/geographical area;
  - ii. approval is granted by the Authority prior to any anticipated T&S expense;
  - iii. receipts are submitted, with an invoice, itemising all expenses incurred and these are accepted by the Authority.
- b. Sub-Contractor. If the performance of the Contract requires 'out of scope' repairs to vehicle sub-systems (i.e. Atlas, Cargotec, EKA Ltd, Rotzler, ZF) and this necessitates Sub-Contractor support, the Sub-Contractor may request T&S via the Contractor if:
  - i. 5 hours or more is spent away from their normal place of work/geographical area;
  - ii. approval is granted by the Authority, to the Contractor, prior to any anticipated T&S expense;
  - iii. receipts are submitted, with an invoice, via the Contractor itemising all expenses incurred and these are accepted by the Authority.

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

##### **L1. Presentation and Preparation of Vehicles**

- a. For vehicles being presented for work :

(1). Vehicle Attachments - All non-essential vehicle attachments and additional items associated with a vehicle shall be removed by the Authority prior to presentation of the vehicle.

(2). Cleanliness – Vehicles shall be presented to the Contractor in clean state. Clean state shall be defined as being free of large concentrations of mud and/or dirt on the vehicle which would either hinder the contractor in the delivery of repair, testing or certification or cause risk to the delivery of such a service.

## **L2. Tasking of Work and Approval to Proceed**

All work to be carried out under the Contract shall be tasked in writing by the Authority (refer to box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet)) or their authorised representative. The Authority shall not be responsible for any verbal orders given by any person whatsoever. If work is required that is not included within the Contract and a new price needs agreeing, the Contractor shall contact the Authority (refer to box 1 of DEFFORM 111).

## **L3. Issue of Government Property**

Refer to details pertaining to DEFCON694(SC3) (Edn.03/16) - Accounting For Property of the Authority on Page 30 above.

## **L4. Specific Guarantee**

a. If, within 12 months of the date upon which repair, testing or certification is accepted by the Authority, any of the work carried out under the Contract is found to be unsatisfactory other than as a result of an act or omission of the Authority under this Contract, the cost of rectification shall be borne by the Contractor.

b. For the purposes of this Contract “unsatisfactory” shall include but not be limited to:

(1) Repairs which have not been conducted in accordance with AESPs or manufacturers instructions.

(2) Materiel which the Contractor has provided which is not approved by the manufacturer of the vehicle.

c. Although the Authority shall not be bound to return the Articles to the Contractor for rectification of faults in accordance with sub-clause L4.a. above, any such rectification work shall be carried out in accordance with the quality standards specified in the Contract.

d. In the event that the Contractor incurs cost in ascertaining the cause of the faults which are subsequently agreed not to be attributable to him, the Authority will pay fair and reasonable prices for the work done.

## **L5. Quality Assurance**

a. For the purposes of this contract, the Contractor shall maintain for the duration of the contract, their quality management system in accordance with the requirements specified at Clause B1.b.(1) Contractor’s Obligations – Quality Assurance to Schedule 3 (Contract Data Sheet).

b. All requirements of the Contract, or any sub-contract, shall be subject to Quality Assurance to the satisfaction of the Authority’s Quality Authority (QAA) (also called the Quality Assurance Representative (QAR)) in DEF STAN (05-092) or his authorised representative. The Contractor will provide the QAA with all necessary facilities and allow access to, and use of, all documents and data relating to the Contract.

## **L6. Acceptance Procedure**

a. The Authority, detailed in Box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet), shall nominate a representative to assess, evaluate and agree work prior to commencement as well as monitoring work progress. This representative may be described as an ‘Assessor’ or ‘Production Officer’ or ‘Designated Officer’.

b. The Contractor shall notify the Authority of work completion, or work nearing completion, and agree a suitable date and time for the work to be inspected and accepted. All work is to be completed to the satisfaction of the Authority's representative.

c. If any of the Contractor Deliverables are not accepted by the Authority's representative, Condition K1. Rejection shall apply.

#### **L7. Key Performance Indicators**

a. A Key Performance Indicator (KPI) is an objective measure of Contractor performance against Contractor deliverables.

b. The following KPIs shall commence from the Effective Date of Contract as specified within A24. Duration of Contract:

i. KPI 01: The Contractor shall ensure that only acceptable deliverables, which meet the standards specified at L5. Quality Assurance, are released to the Authority.  
Target: 95%

ii. KPI 02: The Contractor shall complete all work, following the process identified at para 6.d 'Turn Around Times' to Schedule 5 Specification, within the time limit specified.  
Target: 95%

c. The KPI percentage shall be calculated over a period of 3 months using the formula below:

i.  $\frac{\text{Total number of vehicles failing the KPI}}{\text{Total number of vehicles completed}} \times 100 = \%$ . If there are zero failures, this shall represent a 100% pass.

d. The Authority shall invoke condition F1. Authority's Remedies for Breach of Contract if the Contractor commits a persistent failure.

e. The Authority and Contractor shall review the effectiveness of the KPIs, detailed at L7.b., at 6 monthly intervals as part of Condition H1. Progress Meetings.

## Schedule 1 - Definitions of Contract

### Core Definitions

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

<b>Contract Implementation Date</b>	means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required;
<b>Contract Price</b>	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract;
<b>Contractor</b>	means the person who, by the Contract, undertakes to provide the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
<b>Contractor Commercially Sensitive Information</b>	means the Information listed in the completed Schedule 6 - Contractor's Commercially Sensitive Information Form, which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
<b>Contractor Deliverables</b>	means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification;
<b>Contractor's Representative</b>	means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract;
<b>Contractor's Team</b>	means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract;
<b>Control</b>	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <p>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</p> <p>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</p> <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>DAB Form 10</b>	means the MOD invoice summary form;
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated at Annex A to Schedule 3 (Contract Data Sheet);
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at <a href="https://www.gov.uk/acquisition-operating-framework">https://www.gov.uk/acquisition-operating-framework</a> ;

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

Contract;

**P2P**

means the MOD electronic ordering, receipting and payment system;

**Parties**

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

**Schedule of Requirements**

means Schedule 2 (Schedule of Requirements) and Annex A to Schedule 2, which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable;

**Specification**

means Schedule 5 (Specification) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables;

**Subcontractor**

means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);

**Supported Businesses**

means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;

**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.