



Ministry
of Defence

Team: Space Delivery Team

**Contract
No: 708266450**

For: Project BOREALIS

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

Team Name and address: Space DT

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General Conditions

1 General

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

2 Duration of Contract

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

3 Entire Agreement

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

4 Governing Law

- a. Subject to Clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to Clause 4.d and Condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to Clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
 - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
 - "a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
 - b. Subject to Condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
 - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
 - (2) Clause 40.b shall be amended to read:

"In the event that the dispute or claim is not resolved pursuant to Clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010."

- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or

Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

5 Precedence

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
 - (1) Conditions 1 - 65 of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
 - (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
 - (3) the remaining Schedules; and
 - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in Clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in Clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 40 (Dispute Resolution).

6 Formal Amendments to the Contract

- a. Except as provided in Condition 31 and subject to Clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of: (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used); and
- (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
 - (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127. Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with Clause 5 of DEFCON 643 (SC2); or
 - (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

Changes to the Specification

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

7 Authority Representatives

- a. Any reference to the Authority in respect of:
 - (1) the giving of consent;
 - (2) the delivering of any Notices; or

(3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this Condition 7.

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

8 Severability

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

9 Waiver

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

10 Assignment of Contract

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

11 Third Party Rights

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

12 Transparency

- a. Notwithstanding any other term of this Contract, including Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.
- b. Subject to Clause 12.c the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such Information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- d. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in Clauses 12.e to 12.i. Where the Authority publishes Transparency Information, it shall:
 - (1) before publishing, redact any Information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), for the avoidance of doubt, including Sensitive Information;
 - (2) taking account of the Sensitive Information set out in Schedule 5, consult with the Contractor where the Authority intends to publish Information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
 - (3) present information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how this Contract is being performed.

Publishable Performance Information

- e. Within three (3) months of the effective date of Contract the Contractor shall provide to the Authority for its approval (such approval shall not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of Schedule 11.

- f. If the Authority rejects any draft Publishable Performance Information the Contractor shall submit a revised version of the relevant KPI Data Report for further approval by the Authority with five (5) business days of receipt of any notice or rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have an agreed version of the Publishable Performance Information.
- g. The Contractor shall provide an accurate and up-to-date version of the KPI Data Report to the Authority for each quarter at the frequency referred to in the agreed Schedule 11.
- h. Any dispute in connection with the preparation and/or approval of Publishable Performance Information, other than under Clause 12.f, shall be resolved in accordance with the dispute resolution procedure provided for in this Contract.
- i. The requirements of this Condition are in addition to any other reporting requirements in this Contract.

13 Disclosure of Information

- a. Subject to Clauses 13.d to 13.i and Condition 12 each Party:
 - (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
 - (1) is disclosed to their employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
- c. The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at Clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. A Party shall not be in breach of Clauses 13.a, 13.b, 13.f, 13.g and 13.h 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) 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. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
- (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) subject to Clause 13.g below, on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;
- (5) subject to Clause 13.g below, 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. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 13.f.(4) or 13.f.(5) above, the Authority will endeavour to provide the Contractor with 3

Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 13.f.(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.

h. Before sharing any Information in accordance with Clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

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

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

14 Publicity and Communications with the Media

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

15 Change of Control of Contractor

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

b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

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

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

c. The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to contract award.

d. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with Clause 15.a. The Authority shall act reasonably in exercising its right of termination under this Condition. e. If the Authority exercises its right to terminate in accordance with Clause 15.d the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this Clause 15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

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

16 Environmental Requirements

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

17 Contractor's Records

a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.

b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

- (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the

Authority's annual and interim report and accounts; and

- (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under Clause 17.a of this Condition, and subject to the provisions of Condition 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

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

18 Notices

a. A Notice served under the Contract shall be:

- (1) in writing in the English language;
- (2) authenticated by signature or such other method as may be agreed between the Parties;
- (3) sent for the attention of the other Party's Representative, and to the address set out in Schedule 3 (Contract Data Sheet);
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business

Day of the recipient immediately following the day of delivery;

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

19 Progress Monitoring, Meetings and Reports

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

b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum: (1)

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

Supply of Contractor Deliverables

20 Supply of Contractor Deliverables and Quality Assurance

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

b. The Contractor shall:

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

c. The provisions of Clause 20.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor. d. The Contractor shall:

- (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
- (2) notify the Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
- (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

21 Marking of Contractor Deliverables

a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with

the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).

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

22 Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

- a. Packaging responsibilities are as follows:
 - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
 - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
 - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
 - (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:
 - (1) The Contractor shall provide Packaging which:
 - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
 - (b) is labelled to enable the contents to be identified without need to breach the package; and (c) is compliant with statutory requirements and this Condition.
 - (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria: (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
- (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with Clauses 22.i to 22.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
 - (1) The Health and Safety At Work Act 1974 (as amended);
 - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
 - (3) The REACH Regulations 2007 (as amended); and
 - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and: (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and (2) The Air Navigation (Amendment) Order 2019.
- e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with Condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables).
- f. The Contractor shall comply with the requirements for the design of MLP which include Clauses 22.f and 22.g as follows: (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.
 - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES LSOC SpSvcs--SptEng-Pkg1

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESLSOC-SpSvcs-SptEng-Pkg1@mod.gov.uk

- (b) The MPAS Documentation is also available on the DStan website.
- (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).

- (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').
- (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
- (5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract.

When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

- (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
- (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 22.f.(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
- (8) The documents supplied under Clause 22.f.(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

- (1) If the Contractor or their Subcontractor is the PDA they shall:
 - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with Clause 22.f. (b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - i. a list of all SPIS which have been prepared or revised against the Contract; and
 - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where

applicable, to be uploaded onto SPIN.

(c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 22.g.(1)(b).

- (2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
- (3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow Clause 22.g.(1)(b).
- (4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow Clauses 22.g.(1)(a) and 22.g.(1)(b).

h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.

i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

- (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
 - (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
 - (b) Each consignment package shall be marked with details as follows:
 - i. name and address of consignor;
 - ii. name and address of consignee (as stated in the Contract or order); iii. destination where it differs from the consignee's address, normally either:
 - (i). delivery destination / address; or

(ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;

iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.

(i). If aggregated packages are used, their consignment marking and identification requirements are stated at Clause 22.i.

- (2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:
 - (a) description of the Contractor Deliverable;
 - (b) the full thirteen digit NATO Stock Number (NSN);
 - (c) the PPQ;
 - (d) maker's part / catalogue, serial and / or batch number, as appropriate;
 - (e) the Contract and order number when applicable;
 - (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages; (g) shelf life of item where applicable;
 - (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);

- (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
- (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
 - k. (1) the full 13-digit NSN;
 - (2) denomination of quantity (D of Q);
 - (3) actual quantity (quantity in package);
 - (4) manufacturer's serial number and / or batch number, if one has been allocated; and
 - (5) the CP&F-generated unique order identifier.
- l. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet).
- m. The requirements for the consignment of aggregated packages are as follows:
 - (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items. (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
 - (a) class group number;
 - (b) name and address of consignor;
 - (c) name and address of consignee (as stated on the Contract or order);
 - (d) destination if it differs from the consignee's address, normally either:
 - i. delivery destination / address; or
 - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
 - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
 - (f) the CP&F-generated shipping label; and
 - (g) any statutory hazard markings and any handling markings.
- n. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).
- o. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
 - o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Condition 17 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
- u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

23 Plastic Packaging Tax

- a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.

- d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- e. In accordance with Condition 17 the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
 - (1) confirmation of the tax status of any Plastic Packaging Component;
 - (2) documents to confirm that PPT has been properly accounted for;
 - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
 - (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with Clause 23.f above is accurate.
- h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

24 Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables

- a. Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. The Contractor shall provide to the Authority:
 - (1) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
 - (2) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
 - (3) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and/or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the Contractor, to allow safe use of the Article including, as a minimum, the name of that Substance.
- c. For Substances, Mixtures or Articles that meet the criteria list in Clause 24.b above:
 - (1) if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS/safety information and forward it to the Authority and to the address listed in Clause 24.i below; and
 - (2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
- e. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- f. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details in Schedule 6 of:
 - (1) activity; and
 - (2) the substance and form (including any isotope).
- g. If the Substances, Mixtures or Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details in Schedule 6 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under Clause 24.b.(1) and 24.c.(1), any information arising from the provisions of Clauses 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Point of Contact as specified in the Schedule 3 as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet).
- i. So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
 - (1) Hard copies to be sent to:
Hazardous Stores Information System (HSIS)
Spruce 2C, #1260,

MOD Abbey Wood (South)
Bristol BS34 8JH

(2) Emails to be sent to:

DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk

- j. SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for OME are not to be sent to HSIS and must be held by the respective Authority Delivery Team.
- k. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substances,

Mixtures or Articles in Contractor Deliverables shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

- l. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

25 Timber and Wood-Derived Products (Not Used)

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract: (1) shall comply with the Contract Specification; and
(2) must originate either:
 - (a) from a Legal and Sustainable source; or
 - (b) from a FLEGT-licensed or equivalent source.
- b. In addition to the requirements of Clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
 - (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - (3) safeguarding the basic labour rights and health and safety of forest workers.
- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of Clause 25.a or 25.b or both.
- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- e. If the Contractor has already provided the Authority with the Evidence required under Clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of Clauses 25.a or 25.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).
- g. Notwithstanding Clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with: (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with Clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
 - (1) verify the forest source of the timber or wood; and
 - (2) assess whether the source meets the relevant criteria of Clause 25.b.
- i. The statistical reporting requirement at Clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Condition 6 (Formal Amendments to the Contract).
- j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).
- k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with Condition 6 (Formal Amendments to the Contract). l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
 - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at <https://www.forestryengland.uk/>) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
 - (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International

Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

26 Certificate of Conformity

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification.

One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.

- c. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).
 - d. The Information provided on the CofC shall include:
 - (1) Contractor's name and address;
 - (2) Contractor unique CofC number;
 - (3) Contract number and where applicable Contract amendment number;
 - (4) details of any approved concessions;
 - (5) acquirer name and organisation;
 - (6) Delivery address;
 - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
 - (8) description of Contractor Deliverable, including part number, specification and configuration status;
 - (9) NATO Stock Number (NSN) (where allocated);
 - (10) identification marks, batch and serial numbers in accordance with the Specification;
 - (11) quantities;
 - (12) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

- e. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at Clause 26.d. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

27 Access to Contractor's Premises

- a. The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of Clause 27.a are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

28 Delivery / Collection

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery

Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;

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

- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with Clause 28.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 28.c.

29 Acceptance

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

- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
(2) the time limit in which to reject the Contractor Deliverables defined in Clause 30.b has elapsed.

30 Rejection and Counterfeit Materiel Rejection:

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

b. Rejection of any of the Contractor Deliverables under Clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

Counterfeit Materiel:

c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:

- (1) notify the Contractor in writing of its suspicion and reasons therefore;
(2) where reasonably practicable, and if requested by the Contractor within 10 Business Days of such notification, (at the

Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor

the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.

- (3) at its discretion, provide the Contractor with a sample of the Contractor Deliverable or consignment for validation or testing purposes by the Contractor (at the Contractor's own risk and expense);
(4) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c.(2).(i) or the provision of a sample at 30.c.(2).(ii), to comment on whether the Contractor

Deliverable or consignment meets the definition of Counterfeit Materiel; and

- (5) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel.

d. Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a and 30.b (Rejection), and provide written notification to the Contractor of the rejection.

e. In addition to its rights under 30.a and 30.b (Rejection), where the Authority has determined that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to: (1) retain any Counterfeit Materiel; and/or

(2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment; and such retention shall not constitute acceptance under Condition 29 (Acceptance).

f. Where the Authority intends to exercise its rights under Clause 30.e the Contractor may, subject to the agreement of the Authority (and at the Contractor's own risk and expense and subject to any reasonable controls and timeframe agreed), arrange, for:

- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is reasonably satisfied does not contain Counterfeit Materiel.

g. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with Clause 30.e, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under Clause 30.f but the Contractor fails to do so within the period agreed and subject to Clause 30.k, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
(2) to pass it to a relevant investigatory or regulatory authority;
(3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or

risk management purposes. Results from any such tests shall, at the discretion of the Authority, be shared with the Contractor; and/or

- (4) to recover the appropriate, attributable, and reasonable costs incurred by the Authority in respect of testing, storage, access, and/or disposal of it from the Contractor;

and exercise of the rights granted at Clauses 30.g.(1) to 30.g.(3) shall not constitute acceptance under Condition 29 (Acceptance). h. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under Clause 30.g.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under Clause 30.g.(4) then the balance shall accrue to the Contractor.

- i. The Authority shall not use a retained Contractor Deliverable or consignment other than as permitted in Clauses 30.c – 30.k.
- j. The Authority may report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- k. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in Clauses 30.c – 30.k except:
 - (1) in relation to the balance that may accrue to the Contractor in accordance with Clause 30.h; or
 - (2) where it has been determined in accordance with Condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with Clause 30.c.(5). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with Clause 30.c.

31 Diversion Orders

- a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- c. The Authority reserves the right to cancel the Diversion Order.
- d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

32 Self-to-Self Delivery

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

Licences and Intellectual Property

33 Import and Export Licences

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
 - (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
 - (a) the end user as: His Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
 - (b) the end use as: For the Purposes of HM Government; and
 - (2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- c. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.
- e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or

the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

- (1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
 - (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- g. Where the Authority invokes Clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
- i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
- j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.
- k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to: (1) a non-UK export licence, authorisation or exemption; or
- (2) any other related transfer or export control, that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 34 (Third Party Intellectual Property – Rights and Restrictions).
- l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 33.k.(1) or 33.k.(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- m. If the information to be provided under Clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 33.l.
- n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clauses 33.l or 33.m of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 33.l or 33.m of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- p. Where following receipt of materiel from a Subcontractor or any of their other suppliers restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 10 days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 10 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in Clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.
- r. In the event that the restrictions notified to the Authority pursuant to Clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to Clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance

with Clause 33.l, termination under Clause 33.t will be in accordance with Condition 43 (Material Breach) and the provisions of Clause 34.v will not apply.

- s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the

Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty

(30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

- t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

- u. Where:

(1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 33.s or 33.t or both; or

(2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate; the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Formal Amendments to the Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of Condition 42 (Termination for Convenience) and as referenced in the Contract.

- v. Pending agreement of any amendment of the Contract as set out in Clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

34 Third Party Intellectual Property – Rights and Restrictions

- a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
- (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section

2 of the Defence Contracts Act 1958;

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

Clause 34.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 34.a has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.

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

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of

Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949;

- (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 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under Clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
 - (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
- h. The Authority shall assume all liability and shall indemnify the Contractor, their officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
 - (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
 - (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under Clause 34.a.
- k. Where authorisation is given by the Authority under Clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
 - (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
 - (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
 - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
 - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
 - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, their officers, agents and employees against liability, including costs as a result of:
 - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
 - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:

- (1) Clauses 34.a – 34.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 34.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
 - (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in Condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

Notification of Intellectual Property Rights (IPR) Restrictions

- r. the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 9 (Notification of Intellectual Property Rights (IPR) Restrictions).
- s. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 9.
- t. Any amendment to Schedule 9 shall be made in accordance with Condition 6.

Pricing and Payment

35 Contract Price

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to Clause 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

36 Payment and Recovery of Sums Due

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under Clause 36.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with Clause 36.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with Clause 36.b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of Clause 36.c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

37 Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 40 (Dispute Resolution).
- g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

38 Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 11 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 38 shall be subject to:
- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 36.f;
 - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid;
 - and (3) the Authority receiving notification under both Clauses 38.b and 38.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 38.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 38.a.(1) and 38.a.(2); and
 - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Clauses 38.a.(1) and 38.a.(2).
- d. The provisions of Condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

39 Subcontracting and Prompt Payment

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a subcontract, they shall cause a term to be included in such subcontract:
- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
 - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid

and undisputed; (3) providing that where the Contractor fails to comply with Clause 39.b.(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 39.b.(2) after a reasonable time has passed; and

(4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as Clauses 39.b.(1) to 39.b.(4).

Termination

40 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 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 40.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.

41 Termination for Insolvency or Corrupt Gifts

Insolvency:

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

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the

Contractor is notified of the presentation; or

- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- (6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
 - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the

1986 within twenty-one (21) days of service of the Statutory Demand on them; or

- (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or (8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

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

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in Clauses 41.a.(9) to 41.a.(14) inclusive above.

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

c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):

- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is

made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

- d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
 - (2) ~~to recover from the Contractor the amount or value of any such gift, consideration or commission;~~ and
 - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this Condition, the Authority shall:
- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.
- f. Recovery action taken against any person in his Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

42 Termination for Convenience

- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
- b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
- (1) not start work on any element of the Contractor Deliverables not yet started;
 - (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
 - (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Clauses 42.b.(2) and 42.b.(3) of this Condition.
- c. Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under Clause 42.b):
- (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
 - (a) in the possession of the Contractor at the date of termination; and
 - (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
 - (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - (a) all such unused and undamaged materiel; and
 - (b) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
 - (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.
- d. The Authority shall (subject to Clause 42.e below and to the Contractor's compliance with any direction given by the Authority in Clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
- (1) the Contractor taking all reasonable steps to mitigate such loss; and
 - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of Clauses 42.a to 42.e except that:

- (1) the name of the Contractor shall be substituted for the Authority except in Clause 42.c.(1);
- (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20)

Business Days; and

- (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 42.
- g. Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

43 Material Breach

- a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.
- b. Where the Authority has terminated the Contract under Clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (2) obtaining the Contractor Deliverable in substitution from another supplier.
- c. Upon receiving written Notice of Material Breach, the Contractor shall have thirty (30) calendar days (or a time otherwise agreed by the parties) from the date of receipt of such notice to remedy the breach ("Remedy Period"), provided that:
 - (1) A rectification plan is submitted to the Authority within ten (10) calendar days of the date of the written Notice of Material Breach for the Authority's consideration.
 - i The rectification plan required at Condition 43 (Material Breach) shall address how the Contractor will fulfil their obligations in the Contract to rectify the Material Breach.
 - ii The rectification plan shall include a programme plan with timelines, and a clear description of the recovery measures which must include a list of resources and personnel allocated to the rectification effort
 - iii The rectification plan is subject to agreement by the Authority who shall in its review of the rectification plan, take account of the Contractors representations and not unreasonably reject.
 - (2) The Contractor shall provide progress updates to the Authority at regular intervals during the Remedy Period (as agreed in the rectification plan)
 - (3) Where the Contractor cannot demonstrate to the satisfaction of the Authority, that the rectification plan gives confidence that all relevant obligations included in the written Notice of material breach will be met on time then the Authority has the right to reject the rectification plan.
 - (4) If the Authority is not content that the rectification plan will deliver to the required timescales, it may, at its discretion, inform the Contractor about any changes required. If the parties fail to agree on the content of the rectification plan, the Authority shall have the right to terminate for Material Breach in accordance with this Condition 43.
 - (5) The Contractor will no longer be in material breach following agreement of the rectification plan, and such detail shall be incorporated into the Contract, in accordance with General Condition 6 – Formal Amendments to the Contract,
 - (6) If the Contractor fails to rectify the material breach within the Remedy Period to the Authority reasonable satisfaction, the Authority shall have the right to terminate the contract under this condition.

44 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.

Additional Conditions

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

DEFCON 5J

DEFCON 5J (Edn 18/11/16) - Unique Identifiers

DEFCON 76

DEFCON 76 (SC2) (Edn. 11/22) - Contractor's Personnel at Government Establishments

DEFCON 532B

DEFCON 532B (Edn 12/22) - Protection of Personal Data

DEFCON 565

DEFCON 565 (Edn 07/23) – Supply Chain Resilience and Risk Awareness

DEFCON 602A

DEFCON 602A (SC2) (Edn. 04/23) – Quality Assurance (With Deliverable Quality Plan)

DEFCON 611

DEFCON 611 (SC2) (Edn. 12/22) – Issued Property

DEFCON 625

DEFCON 625 (06/21) - Co-operation on Expiry of Contract

DEFCON 627

DEFCON 627 (11/21) – Requirement for a Certificate of Conformity

DEFCON 649

DEFCON 649 (SC2) (12/21) – Vesting

DEFCON 658

DEFCON 658 (SC2) (Edn 10/22) – Cyber

DEFCON 659A

DEFCON 659A (Edn. 02/24) – Security Measures

DEFCON 660

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

DEFCON 670

DEFCON 670 (SC2) (Edn. 02/17) – Tax Compliance

DEFCON 675

DEFCON 675 (Edn 03/21) – Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)

DEFCON 678

DEFCON 678 (Edn 09/19) – SME Spend Data Collection

DEFCON 687A

DEFCON 687A (Edn 06/21) - Provision of A Shared Data Environment Service

DEFCON 694

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

46 The special Conditions that apply to the Contract are:

Any Conditions relating to Agile development are subject to amendment and agreement between the parties during the Discovery Phase. As an exception to Condition 5, and in

the event of a conflict between Schedule 18 Annex B and Condition 47 and / or Condition 48 then Schedule 18 Annex B shall take precedence.

47 Agile Methodology

Agile Methodology & Process

- a. The BOREALIS Delivery Phase shall operate as per the Agile methodology detailed at Schedule 18, Annex B (Agile Methodology).
- b. The agreed Agile Methodology shall be scalable to allow for an expansion in the number of development teams concurrently operating.
- c. Development and maintenance work conducted in the Agile Release Train shall be divided into Programme increments (PI) comprising of PI Planning, three three-week development sprints and an IP sprint during which the scrum teams prepare for the next PI.

48 Agile Acceptance Criteria and Process

- a. The Steer phases encompasses the strategic prioritisation and direction setting performed by the BOREALIS Executive Group (BEG) and the detailed prioritisation of candidate work items by the BOREALIS Management Group (BMG) two weeks prior to initiation of each PI. Upon completion of the Session, the Authority Nominated Representative shall submit AG-TAF Part 1 to the Contractor Project Manager (PM); this action triggers the commencement of the tasking process, which is detailed in Schedule 14.
- b. Upon receipt of an approved AG-TAF Part 2(a) and an AG-TAF Part 3(a) the Contractor may commence work and may proceed to Project Increment Planning (PI Planning)

PI Planning Phase:

- c. PI Planning phase shall be a 'virtual' two-day event or agreed otherwise, conducted using the MS Teams collaboration platform, The PI Planning Phase takes are as follows:
 - i. a priority list of all epics, features and stories instantiated from the updated DRM and then ranked in order by the BEG.
- d. The PI Planning sessions will provide a set of agreed PI objectives (both committed and uncommitted) and resources requirements are agreed for the upcoming Project Increment.
 - i. The PI Planning session also populates a plan for each scrum team's work.
 - ii. The PI Planning Event shall take as input an initial list of all epics, features and stories and then ranked in order of priority by the BOREALIS Management Group (BMG) in accordance with the SAFe Weighted Shortest Job First (WSJF) methodology.
- e. The AG-TAF Part 2(b) shall be populated by the Contractor with the detail at Clause 48.d.i and 47.d.ii
- f. Upon completion of the PI Planning Phase, the Contractor is to submit an AG-TAF Part 2(b) and final preparatory work ahead of the first Sprint. The AG-TAF Part 2(b) must include a Firm Price Quotation, inclusive of all planned Sprints and Retrospective activities, and to be submitted to the Authority within three working days of the PI Planning completion.
- g. Should the Contractor's Firm Price Quotation be acceptable to the Authority, Part 3(a) of the AG-TAF will be signed by the Authority's approvers approval to proceed will be given by the Authority's Commercial Manager named in DEFFORM 111 Appendix to Contract.
 - i. Should AG-TAF 2(b) be found unacceptable, it shall be returned to the Contractor for amendment.
- h. Upon receipt of an approved AG-TAF Part 2(b) the Authority's representative shall formally accept by means of a AG-TAF Part 3(b) sign off.

Sprints

- i. The Programme Increments contain three three-week development sprints and Innovation and Planning (IP) sprint during which the Scrum teams prepare for the next PI.
- i. A single day Sprint Planning session shall be conducted at the commencement of each sprint by each scrum team, with either a PO or IPO in attendance.
- j. Each Sprint shall culminate with a review event during which the development team shall present progress against planned features and stories to Authority stakeholders with the aid demonstrations of real capability and invite feedback from those present. Sprint review meetings shall be hosted virtually with remote attendance supported via MS Teams, unless agreed otherwise with the Authority and Contractor.

IP Sprint

- k. Each PI will conclude with an IP sprint. This sprint provides the following:
 - i. A buffer in the event that unforeseen issues have affected achievement of the planned PI objectives.
 - ii. Time for teams to plan the following PI.
 - iii. An opportunity to engage in innovation, focussing on exploring new ideas, conducting experiments or improving technical practices based on lessons learnt in the development sprints.
- l. Upon completion of the Sprint and IP Sprint, the Contractor shall produce and submit AG-TAF Part 4 to the Authority. The AG-TAF Part 4 shall include:
 - i. A delivery summary, which details progress made against each backlog item defined in AG-TAF Part 2(b)
 - ii. Any development backlog items which were not completed or failed acceptance must have a course of action
 - iii. Shall also include Lessons learned over the Agile Sprint.
- m. The performance of the Development Team(s) is assessed against KPI 5. The performance shall be detailed by the Contractor in AG-TAF Part 4 with a Delivery Summary, Lessons Learned and Benefits Enablement Summary.
- n. The submission of the AG-TAF Part 4 is subject to be submitted within five (5) working days of the final Sprint completion.
- o. Should the AG-TAF Part 4 be acceptable, the Authority representative shall formally accept that the Agile Sprint has closed by signing off the AG-TAF within five (5) working days.
 - i. Should the AG-TAF Part 4 be unacceptable, it shall be returned to the Contractor for amendment.
- p. An approved/counter-signed AG-TAF Part 4 by The Authority Nominated Representative, the Agile Tasking is closed.

SRR/ PDR/ CDR Events:

- q. BOREALIS shall include a per-PI assurance review event, which combines SRR, PDR and CDR functions for Epics, Features and Stories that have reached the appropriate level of maturity to warrant the relevant review scrutiny.
 - i. The applied criteria for SRR, PDR and CDR events can be found at Schedule 18, Annex B.
- r. A review data pack shall be delivered to the Authority's designated reviewers prior to the formal review meeting. The pack is to contain:
 - i. agile definitions
 - ii. specifications documents
- s. as detailed in the EMP and shall be delivered 10 working days prior to the review meeting.
- t. The review RIDs from the Authority shall be provided in accordance with the RID Template defined in the PMP, and received by CGI at least three working days prior to the meeting.

Agile Change Control

Pricing and Payment

49 Limit of Liability for Agile Taskings

- a. This is the Authority's limit of expenditure against line item 6 and 7 of Schedule 2, 'The Schedule of Requirements'. The Limit of Liability is not a total amount to be paid by the Authority to the Contractor and any amount within the Limit of Liability is subject to the process at Schedule 14 and requires approval in writing of The Authority's Commercial Officer named within the DEFFORM 111 at Appendix 1 to this contract. Any expenditure remaining on the Limit of Liability against the particular line-item 6 and 7 of Schedule 2, 'The Schedule of Requirements' is the Authority's expenditure and it is down to the discretion of the Authority as to how this expenditure is utilised.
- b. If expenditure incurred against any limit of liability on the Contract reaches 80% of the stated financial limit detailed in the Schedule of Requirement, the Contractor shall:
- i. Inform The Authority's Commercial Officer within five Business Days of identification; and
 - ii. Highlight this within the next Cost and Schedule Status Report due in accordance with Schedule 2 Annex B (Governance Document).

50 Agile Task Pricing

- a. All pricing for Agile Tasks must be in accordance with the Labour Rates at Schedule 13.
- b. The Contractor must provide a Firm Price quotation each Agile Tasking Form submitted.
- c. All pricing must be in accordance with DEFCON 127 - Price Fixing Condition for Contracts Of Lesser Value and DEFCON 643 - Price Fixing (Non-qualifying contracts) as appropriate, the price breakdown including; Direct Labour (Labour Rates); Overheads, Materials, Bought Out parts, Subcontracted work; Special jigs and tools etc and profit.

51 Agile Task Payment

- a. Payment to the Contractor will be made on completion of the Agile Task. Acceptance is authorised in accordance with Schedule 14 Tasking.
- b. Invoices should be submitted against the unique Agile Task Purchase Order that The Authority provides via CP&F. Under each Agile Task, a new Purchase Order will be issued, and invoices against any other Contractually agreed Firm Priced or Limit of Liability Purchase Order in place will be rejected.

52 Pricing

- a. The prices payable under the Contract shall be as detailed at Schedule 2 (Schedule of Requirements).
- b. Where the prices for Items listed in Schedule 2 (Schedule of Requirements) are Firm Prices, these are not subject to change.
- c. The prices detailed at Schedule 2 (Schedule of Requirements) for item numbers 1 – 7 (inclusive) shall be Firm Price.
- d. The prices detailed at Schedule 2 (Schedule of Requirements) for item numbers 8 – 11. (inclusive) shall be FIXED Price.

- e. Where the prices for Items listed in the Schedule 2 (Schedule of Requirements) are FIXED at Contract Award, these are to be converted to Firm Prices before any payment can be claimed. The Fixed Prices shall be converted to Firm Prices in accordance with condition 53 Variation of Price by formal Contract amendment at the point the Authority invokes each contract option.

53 Variation of Price

- a. Variation of Price will be applied to all FIXED prices in accordance with the below formula.
- b. The fixed prices stated in Schedule 2 (Schedule of Requirements) are FIXED at period 1 contract price levels which are 1st April 2025 – 31st March 2026. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased. Any such variation shall be calculated in accordance with the following formula:

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

Where:

V represents the variation of price

P represents the FIXED price as stated in the Schedule of Requirements at Schedule 2.

O represents the index Top-level Services Producer Price Index – HQVC: SPPI INDEX OUTPUT DOMESTIC - J Information and communication services

O_i represents the average of index – Top Level Service Producer Price Index (HQVC) across the 12 monthly period prior to contract payment date to the period for which variation is being added.

O₀ represents the base period which is 12 months prior to the Contract Award date.

a represents the Non- Variable Element (NVE) = 0%

b represents the Variable Element = 100%

a+b=100%

- c. The Index referred to in Clause 54(b) above shall be taken from the following Tables:
- i. OUTPUT Price Index - e.g. ONS Publication MM22 Table 2 'Price Indices of UK OUTPUT: All Manufacturing and Selected Industries', or, Table 4 'Price Indices of Products Manufactured in the UK'.
- d. In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the contract and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
- e. In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Clause 53(d) above) shall then be applied.
- f. Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.

- g. The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.
- h. Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.
- i. Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the "requirements of this Condition 53" have been met.

54 Payment Plan

- a. The Authority shall, subject to the following provisions of this condition, and in accordance with the Payment Plan at Schedule 12 make to the Contractor payments in arrears against the price(s) payable against Schedule 2 (Schedule of Requirements) Items 1-4.
- b. The Contractor shall be entitled to payments, to be claimed in accordance with condition 35 for each payment under the Payment Plan at Schedule 12, provided that:
 - i. the Contractor has completed all work comprised in the Schedule 2 Annex A (Statement of Requirement) for which that payment is sought and
 - ii. the Contractor shall have complied with all its contractual obligations which enable the Authority to monitor the Contractor's contractual performance, including but not limited to those obligations related to the provision of information to the Authority.

55 Options

The Contractor, in consideration of award of this Contract, grants to the Authority the irrevocable options to extend the contract for a further period of one year x 2 as detailed at Items 8-11, Schedule 2 (Schedule of Requirement) in accordance with the terms and conditions set out in this Contract provided that the options are exercised in accordance with this condition.

- a. The Authority shall not be liable for any advance commitment that the Contractor may enter into in pursuance of the options referred to. The Authority shall be under no obligation to exercise either of the Options contained at Schedule 2 (Schedule of Requirement).
- b. The Authority may choose to enter into any of the Options detailed at Items 8-11, Schedule 2 (Schedule of Requirement) separately or Items 8 – 11 concurrently.
- c. The Authority may choose to enter into Options detailed at Items 8.a and 9.a, Schedule 2 (Schedule of Requirement) without invoking Options detailed at Items 8.b and 9.b.
- d. The Authority may only enter into Options detailed at Items 8.b and 9.b, Schedule 2 (Schedule of Requirement) if it invokes the Options detailed at Items 8.a and 9.a.
- e. The Authority may choose to enter into the Options detailed at Items 8-11, Schedule 2 (Schedule of Requirement) period 4 separately to period 5 or invoke both option for periods 4 and 5 together.
- f. If the Authority chooses to exercise the options at Schedule 2 (Schedule of Requirement), this will result in a change to the duration at Schedule 3 (Contract Data Sheet).
- g. If the Authority chooses to exercise any of the Options detailed at Items 8 -11, Schedule 2 (Schedule of Requirement) periods 4 and/or 5, this will be enacted in accordance with this Condition 55 (Options) and Condition 4 (Amendments

to Contract), at the total Firm Price (or Fixed Price subject to Condition 53 Variation of Pricing) of Items 8 -11, Schedule 2 (Schedule of Requirement).

- h. If the Authority wishes to exercise any of the Options at Items 8-11, Schedule 2 (Schedule of Requirement) later than Contract Award, the Authority shall provide the Contractor with 90 calendar days' notice .
- i. The Options at Items 8 -11, Schedule 2 (Schedule of Requirement) shall be valid for the duration of the Contract.

56 Performance

- a. Schedule 11 (Key Performance Indicators) sets out the Key Performance Indicators (KPI's) and Performance Indicator (PI) which the Parties have agreed shall be used to measure the performance of the Contractor.
- b. For the purposes of this condition, the measurement period is the period of time that the Authority shall use to measure performance against the individual KPIs, and the performance criteria is the criteria used to assess the level of performance within that measurement period. The measurement periods and performance criteria are detailed in each individual KPI within Schedule 11 and shall start from the start date of Item 2, Schedule 2 (Schedule of Requirement) (1st April 2025).
- c. The Contractor shall monitor its performance against each KPI monthly and shall send the Authority a report detailing the level of service achieved in accordance with Schedule 2 Annex A (Statement of Requirement) 2.4.
- d. The Authority has the right to review the KPI's to ensure that they accurately capture the Contractors responsibilities under this Contract. Should key aspects of Contractor responsibility need to be captured by additional KPIs, then these will be added to the Contract, through Contract Amendment, with agreement of the Contractor, in accordance with the procedure set out in Condition 6 (*Formal Amendments to Contract*).

57 Unsatisfactory Performance

- a. The Contractor's performance shall be judged unsatisfactory for KPI 1, KPI 2 and KPI 3 in accordance with the terms at condition 58 Availability Deductions and shall be judged unsatisfactory for KPI 4, KPI 5, KPI 6, KPI 7, KPI 9, KPI 10 and 11 where the KPI in any applicable retention period is either AMBER or RED and in accordance with condition 59 Performance Deductions.
- b. Where unsatisfactory performance occurs for all KPI's and PIs at Schedule 11, the Contractor shall deliver a report to the Authority within 3 (three) calendar days of the event causing the unsatisfactory performance detailing the circumstances and any mitigating factors, supported by a recovery plan the Contractor intends to implement to return performance to the required level. The Authority reserves the right to call a meeting, at no cost to the Authority, within 5 (five) business days following the report to discuss the failure and agree a programme for resolution with the Contractor.

- c. The recovery plan shall be subject to the Authority's acceptance and shall include, but not be limited to, causes of the failure, impact of this failure, methods of correcting the failure, and any timescales involved in correction. In the event that the proposed recovery plan is not acceptable to the Authority following discussion, and/ or the plan is delivered late, the KPI or PI shall be, if Amber, re-classified as Red.
- d. For the purposes of this Contract, the incidents below shall be deemed to be significant and/or persistent unsatisfactory performance.
- i. For KPI 1, KPI 2 or KPI 3, one single occurrence of the availability requirement at 79% and below for that measurement period.
 - ii. For KPI 1, KPI 2 or KPI 3, an occurrence of two Availability Deductions in accordance with Clause 59.e in any rolling 3-month period, starting from the start date of Item 2, Schedule 2 (Schedule of Requirement) (1st April 2025).
 - iii. For KPI 4, KPI 5, KPI 6, KPI 8, KPI 9 and KPI 10 an occurrence of two Performance Deductions in accordance with Clause 59.h in any rolling 12-month period, starting from the start date of Item 2, Schedule 2 (Schedule of Requirement) (1st April 2025).
- e. In addition to any other rights or remedies contained within this Contract, should the Authority determine a significant and/or persistent unsatisfactory level of performance in accordance with 57.d, the Authority will have the right (but not the obligation) to terminate the Contract in accordance with Material Breach, as set out at Condition 43 of this Contract.

58 Availability Deductions

- a. KPI 1, KPI 2 and KPI 3 are reported and monitored monthly and require the Contractor to deliver operational availability of $\geq 99\%$ for the BOREALIS capability in accordance with Schedule 11 (Key Performance Indicators)
- b. KPI 1, KPI 2 and KPI 3 are treated as individual KPI's and are not linked in any way. KPI 2 will not come into effect under this contract until Tier 2 goes live. KPI 3 will not come into effect under this contract until Tier 3 goes live.
- c. Performance will be measured against the Performance Criteria at KPI 1, KPI 2 and KPI 3 Schedule 11 (Key Performance Indicators), and in this Condition 58 Availability Deductions.
- d. In the event that the operational availability during the measurement period (monthly) is below the operational availability requirements in the performance criteria, the Authority shall be permitted to withhold a percentage which shall be deducted from one third (1/3) of the quarterly payment for Items 2- 4 (or Items 8-9 if Options invoked in accordance with Condition 55) of the Schedule of Requirements in the relevant payment period at Schedule 12 (Payment Plan).
- e. In the event that a single fault occurs within two calendar days prior to the end of a calendar month and that same single fault continues into a subsequent measurement period, the fault shall be measured as solely occurring in the calendar month that it first began for purposes of recovering the withheld sum in accordance with this Condition 58 Availability Deductions.
- f. The Authority shall withhold the amount specified below from 1/3rd of the total quarterly price of the relevant payment of the Payment Plan at Schedule 12. The amount to be withheld is dependent on the level of availability achieved in the Measurement Period as per below;

Performance Criteria	Withhold amount
96%-98%	5%
90% - 95%	10%
80%-89%	20%
79% and below	30%

- g. In this Condition 58 the withheld sum is recoverable with the achievement of the operational availability requirements as outlined in the Performance Criteria of KPI 1, KP2 and KPI 3 at Schedule 11 (Key Performance Indicators), in the next measurement period.

- h. If the operational availability requirements as outlined in the Performance Criteria of KPI 1, KPI 2 and KPI 3 at Schedule 11 (Key Performance Indicators) are not achieved in the next measurement period, the Contractor will lose all rights to reclaim the withheld amount from the Authority.
- i. The Contractor will be allowed to recover each withheld sum for a subsequent measurement period provided the Contractor's performance is equal to or more than the Availability requirements as outlined in the Performance Criteria of KPI 1, KPI 2 and KPI 3 at Schedule 11 (Key Performance Indicators). Such reclaimed amount shall be included on the Contractor's invoice for the following payment due in line with the Payment Plan, as a separately identified item on the invoice.
- j. If the Contractor does not perform in accordance with the Availability requirements as outlined in the Performance Criteria of KPI 1, KPI 2 and KPI 3 at Schedule 11 (Key Performance Indicators) for the subsequent measurement period, then repayment of the withheld sum shall not occur, and the Contractor will lose all rights to reclaim the withheld sum from the Authority.

59 Performance Deductions

- a. For purposes of this condition, "Programme Increments" are defined as 12-week periods.
- b. KPI 4 – If the Contractor fails to achieve the Green KPI as detailed in Schedule 11 (Key Performance Indicators), the Authority shall be entitled in respect of that measurement period (programme increments) to either deduct or withhold an amount equal to 3% for an Amber or 5% for Red from the sum of the Agile Tasks completed during the measurement period for which the performance deduction relates to.
- c. KPI 5 - if the Contractor fails to achieve the Green KPI as detailed in KPI 5 at Schedule 11 (Key Performance Indicators), the Authority shall be entitled in respect of that measurement period (quarterly) to either deduct or withhold an amount equal to 3% for an Amber or 5% for Red from the sum of the Agile Tasks completed during the measurement period for which the performance deduction relates to.
- d. KPI 6 - if the Contractor fails to achieve the Green KPI as detailed in KPI 6 at Schedule 11 (Key Performance Indicators), the Authority shall be entitled in respect of that measurement period (annually) to either deduct or withhold an amount equal to 5% for Red from the sum of the Agile Tasks completed during the measurement period for which the performance deduction relates to.
- e. KPI 8, KPI 9 and KPI 10 - if the Contractor fails to achieve the Green KPI as detailed in at Schedule 11 (Key Performance Indicators), the Authority shall be entitled in respect of that measurement period (annually) to either deduct or withhold an amount equal 3% for an Amber or to 5% for Red from the sum of the performance completed during the measurement period which the performance deduction relates to.
- f. The Authority has the right to withhold the percentage of the payment associated with AMBER and/or RED for a maximum of three calendar months, upon which it shall be paid to the Contractor at the next quarterly payment providing the Contractor has demonstrated to the Authority's satisfaction at the subsequent review meeting, that performance under the KPI has returned to the GREEN level for the final month of the quarter of the occurrence of the relevant AMBER and/or RED.
- g. For KPI 4 - The Authority has the right to withhold the percentage of the payment associated with AMBER and/or RED for the duration of the subsequent measurement period (Programme Increment) and until the next quarterly payment due, upon which it shall be paid to the Contractor at that next quarterly payment providing the Contractor has demonstrated to the Authority's satisfaction at a prior review meeting, that performance under the KPI has returned to the GREEN level for the prior measurement period (Programme Increment).
- h. The Contractor will be allowed to recover each withheld sum for a subsequent measurement period provided the Contractor's performance is Green as outlined in the performance criteria of the individual KPI at Schedule 11 (Key Performance Indicators). Such reclaimed amount shall be included on the Contractor's invoice for the following payment due in line with the Payment Plan, as a separately identified item on the invoice.

- i. Should performance against a RED not be recovered to GREEN for the final month at the following quarter; the Authority has the right to permanently retain the withheld payment.
- j. The Parties agree that all deductions are reasonable and proportionate to protect the Authority's legitimate interest in the Contractor's performance of its obligations under this Contract and its subject matter.

60 Relief events

60.1 If and to the extent that a Relief Event occurs and is the direct cause of a failure of the Contractor to perform any of its obligations provided in this Contract, then, subject to its compliance with its respective obligations provided in this Condition 60, the Contractor shall be entitled to apply for:

- a. relief from the affected Contractor obligation under this contract and/or performance deductions in connection with any KPI performance failures arising from the occurrence of the relevant Relief Event; and
- b. relief from the Authority's right to terminate this Contract under Condition 61 for any reason arising directly from the occurrence of the relevant Relief Event;

Procedure for Claims

60.2 In order to obtain such relief the Contractor shall at its own cost and expense:

- a. as soon as practicable, and in any event within 5 (five) Business Days, after the Contractor becomes aware that the occurrence of the relevant Relief Event notify the Authority's Representative to such effect, including full details of the event;
- b. if the Authority (acting reasonably) notifies the Contractor that the Authority accepts the Contractor's claim that such event constitutes a Relief Event:
 - a) within 5 (five) Business Days after the date of the Authority's receipt of such notice the Contractor shall:
 - i. notify the Authority's Representative of the relief claimed; and
 - ii. demonstrate to the reasonable satisfaction of the Authority:
 - 1. the need for relief from the operation of; KPI 1, KP2, and in KPI3 at Schedule 11 (Key Performance Indicators) and
 - 2. that the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor, without incurring additional expenditure; and
 - 3. that the Contractor is using reasonable endeavours to perform its obligations under this Contract;
- c. the Contractor shall notify the Authority's Representative, if at any time the Contractor receives or becomes aware of any further information relating to the occurrence of the relevant Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted inaccurate or misleading.

60.3 If the Contractor has complied with its obligations under Condition 60:

- a. the Contractor shall be entitled to such relief for such period from the operation of any KPI performance in relation to any KPI performance failures arising directly and solely from the relevant Relief Event as is reasonable taking into account the direct adverse impact of the relevant Relief Event(s) (such period being the **Relevant Relief Period**); and
- b. the Authority shall not be entitled to exercise its right to terminate this Contract under Condition 61 for any reason directly arising out of the relevant Relief Event during the Relevant Relief Period.

Late Provision of Notice or Information

60.4 If the information required by Condition 61 is provided after the dates referred to in that Condition, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

Failure to Agree

60.5 If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred within 10 (ten) Business Days after (and including) the date on which the Authority is first notified of the occurrence of the relevant event pursuant to this Condition 61, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure engaging any additional technical assistance, as required, to resolve the dispute.

61 Technical Plans

- a. Schedule 17 (Technical Plans) defines the Technical Plans (including delivery dates) that the Contractor is to provide under this Contract. Once the Technical Plans been agreed by the Authority, they shall be incorporated into the Contract as annexes at Schedule 17. The Contractor shall be solely responsible for the accuracy, suitability and applicability of the Technical Plans.

62 Government Furnished Assets

- a. Articles shall be issued to the Contractor in accordance with DEFCON 611 (*Issued Property*) and DEFCON 694 (*Accounting for Property of the Authority*).
- b. The Contractor shall manage any GFA in accordance with DEFSTAN 05/057.
- c. A list of all Government Furnished Assets is detailed in Schedule 10 to the Contract. GFA will be made available as detailed in Schedule 17 and shall be returned to the Authority unchanged in condition except for fair wear and tear unless agreed otherwise by the Authority.
- d. Any Article supplied under the Contract terms that is found to be damaged or unsuitable, shall be reported by the Contractor to the Authority's Project Manager and instruction sought with respect its return.
- e. The Authority will use all reasonable endeavours to ensure that items falling within the scope of Government Furnished Assets are provided to the Contractor in a timely fashion. In the event that any items falling within the scope of Government Furnished Assets provided by or on behalf of the Authority to the Contractor have not been received within a reasonable period of time, the Contractor shall immediately notify the Authority to such effect.

63 Intellectual Property Rights

63.1 Definitions and Interpretation

In this condition the following words and expressions shall have the meanings set respectively against them:

Background IP means Intellectual Property (other than Foreground IP) (i) owned by Contractor or (ii) licensed to Contractor by a third party.

Foreground IP means Intellectual Property created under the terms of or in the performance of this Contract and any pursuant Tasking Form, together with any developments made to Background IP under the terms of or in performance of this Contract and any pursuant Tasking Form (but without prejudice to the ownership of the Background IP). Foreground IP does not include the Contractor's pre-existing IP that exists in any Contractor know how, methodology, processes or procedures used in the provision or Services or production of any Articles or Contractor Deliverables.

63.2 Foreground IP

63.2.1 Without prejudice to the rights of Contractor or any third party in any material generated otherwise than from work undertaken by, or on behalf of, Contractor under the terms of or in the performance of this Contract and any pursuant Tasking Form,

(a) all Foreground IP (including rights in inventions, designs, computer software, databases, copyright works and information) shall vest in and be the property of the Authority, and the Contractor assigns to the Authority, with full title guarantee, title to and all present and future rights and interest in the Foreground IP;

(b) where such Foreground IP forms an Articles or Contractor Deliverable, the Foreground IP shall vest in the Authority at the same time that the Articles or Contractor Deliverable vests in the Authority pursuant to DEFCON 649 (Edn 12/16);

(c) the Contractor shall take all reasonable measures to secure that vesting; and

(d) on request, the Contractor shall demonstrate to the Authority's satisfaction that, where it has sub-contracted work under the Contract, it has secured that vesting in the work performed by its sub-contractors.

63.2.2 The Authority shall determine whether any of the Foreground IP, which vests in the Authority in accordance with this Clause 63.2, should be protected by patent or like protection. The costs of patent or like protection shall be borne by the Authority. At the request of the Authority, Contractor shall assist in obtaining patent or like protection subject to being reimbursed their reasonable costs for providing such assistance.

63.2.3 Contractor shall mark any copyright work which is Foreground IP, which vests in the Authority in accordance with this Paragraph 2, with a legend "© Crown owned copyright [insert year of generation of the work]".

63.2.4 Where there is a need to provide Background IP to the Authority then Contractor shall ensure to the extent reasonably practicable that this is provided in a separate deliverable from the Foreground IP unless to do so would render the Foreground IP unusable or the material or deliverable in which Intellectual Property subsists impractical or unsuitable to use.

63.2.5 To the extent that the Authority owns the Foreground IP the Authority hereby grants to Contractor a royalty free, non-exclusive, worldwide licence to use the Foreground IP for the purposes of performing work under this Contract and any pursuant Tasking Form.

63.2.6 Contractor is entitled to provide such of the Foreground IP owned by the Authority to its sub-contractors, and to grant a sub-licence to such sub-contractors as may be required by sub-contractors, for the performance of work under this Contract and any pursuant Tasking Form provided that:

(a) such sub-licence is non-exclusive, non-transferrable and royalty free;

(b) the sub-licence is solely for the purpose of performing the relevant subcontract under this Continuation of Service Contract and any pursuant Tasking Form;

(c) the sub-contractor in receipt of Foreground IP shall treat it in confidence on terms consistent with those in Condition [...] (Confidentiality);

(d) such sub-licence will terminate on completion of the sub-contract and any materials in which Foreground IP subsists shall be returned to Contractor;

€ no sub-licence will be granted in respect of any Foreground IP which is subject to export controls imposed by governments other than the United Kingdom government except in accordance with the terms of any export licence applicable to such Foreground IP; and

(f) no sub-licence will be granted where Contractor is aware, or should reasonably be aware, that because of security constraints, release to a subcontractor is precluded.

63.2.7 The existence of any confidentiality obligations shall not prevent or restrict the Authority from its entitlement to exercise unfettered rights in the Foreground IP, which is Authority owned. All information in which Foreground IP subsists which is developed by Contractor, and which vests in the Authority in accordance with this Clause 63.2, shall be treated as Authority confidential information for the purposes of this Contract and any pursuant Tasking Form, with the exception of pricing information prepared by the Contractor and information relating to Contractor personnel which shall continue to be Contractor confidential information.

63.2.8 The Authority does not grant any right to Contractor to use any third party Intellectual Property for any purpose other than the performance of this Continuation of Service Contract and any pursuant Tasking Form. If Contractor wishes to use any third party Intellectual Property other than in performance of this Contract and any pursuant Tasking Form then it will be for Contractor to agree terms with the owner thereof.

63.2.9 The Authority agrees to consider in good faith on a case-by-case basis any request from the Contractor for a licence to commercially exploit the Foreground IP.

63.3 Background IP

63.3.1 The Contractor hereby grants to the Authority a non-exclusive, worldwide, perpetual, sub-licensable and royalty-free licence to use, modify, retain and develop the Background IP:

(a) that is embedded in or which are an integral part of any Articles or Contractor Deliverable that comprises Foreground IP, for any purpose;

(b) that exists other than pursuant to (a) and which is required for the continued use of the output of each Tasking, for any purpose relating to the Services (or substantially equivalent services) or use of the products of the Services, where such related purpose may involve any other central government body. For the avoidance of doubt any rights granted over Background IP in this Clause 63.3.1 shall not extend to the commercial exploitation of such Background IP by the Authority or third parties,

subject to the Authority's payment of payments properly due and payable to the Contractor in accordance with the Tasking Form (and the Authority shall continue to have the benefit of this licence during any dispute on payment). The licence in this Clause 63.3.1 does not extend to the Contractor's Background IP that exists in any know how,

methodology, processes or procedures used in the provision of Services or production of any Articles or Contractor Deliverables and which are not a fundamental requirement for the continued and full enjoyment of the Services, Articles or Contractor Deliverables.

63.3.3 Where the Background IP is licensed to the Contractor by a Third Party then prior to utilising the Third Party Background IP, the Contractor shall take all reasonable measure to secure on behalf of the Authority the same rights in such Third Party IP and shall raise for the attention of the Authority any restriction in such rights so that the parties can agree the extent to which such third party IP will form part of the services.

63.3.4 Where any Background IP comprises Third Party commercial off the shelf (COTS) software products, subject to review and approval by the Authority, the Contractor shall notify the Authority prior to utilising the COTS product of: (i) the duration of the licence; (ii) any relevant terms applicable to the use of the COTS software product. Where the Authority approves the use of the COTS software product, the relevant terms shall apply in place of Clause 63.3.1. This notification is without prejudice to Authority's right to obtain its own licences and provide the COTS product to the Contractor as GFA.

63.3.5 The Contractor shall identify any COTS products for which the licence shall expire on expiry or termination of the Tasking Form and the proportion on the fees that relate to such COTS products within the Tasking Form. Where the Authority wishes to continue (or permit any third party) to use such COTS products beyond the term for such COTS product set out in the Tasking Form, the Contractor shall provide reasonable assistance to the Authority in the Authority's efforts to license the COTS products on commercial terms no less favourable than as previously provided under the relevant Tasking Form (without prejudice to Authority's right to obtain its own licences).

63.3.6 Where reasonably practicable, the Contractor shall mark any Background IP delivered to the Authority as such. The Contractor shall endeavour to indicate whether the Authority has previously secured rights in respect of the Background IP.

63.3.7 Subject to 63.3.1, to the extent not already provided to the Authority in an Articles or Contractor Deliverable, the Contractor shall deliver a copy of the Background IP to the Authority on request.

63.4 Retention of Records

63.4.1 During the continuance of this Continuation of Service Contract and not for less than six years after its completion, Contractor shall retain a copy of materials in its possession in which the Foreground IP subsists and any associated materials in which Background IP subsists (which shall be held together in a coherent format, herein referred to as the Control Copy).

63.4.2 The Authority shall have the right during that time, and thereafter as long as the Control Copy is retained, to require Contractor from time to time to furnish to the Authority copies of any and all materials comprising the Control Copy in such form and detail as the Authority may prescribe. Contractor may charge its reasonable Actual Costs (plus VAT, if applicable) for this service, based on the marginal cost of providing such copies.

6.4.3 Without prejudice to its obligations under Paragraph 63.4.1, Contractor shall not dispose of the Control Copy without first providing the Authority 6 months' notice of its intention to dispose of the Control Copy and if the Authority so requests deliver the Control Copy to the Authority.

63.5 Escrow

63.5.1 Where indicated that escrow is required in a Tasking Form, the Contractor and the Authority mutually undertake to sign the National Computer Centre ("NCC") "NCC Single Licensee Software Escrow UK" ("Escrow ") at least 14 Business Days prior to the anticipated delivery of any software under a Tasking Form.

63.5.2 To the extent the Contractor has not already provided the object code, source code and a copy of any tools as part of the Contractor Deliverable or Articles, the Contractor shall deposit the object code, source code and a copy of any tools in written form with NCC as part of delivery of any software. The Contractor shall update the object code, source code and a copy of any tools in written form held in escrow on a six monthly basis and upon any material update (or such other frequency as set out in the Tasking Form).

63.5.3 The Authority acknowledges that where escrow is required for COTS Software, this is subject to the licence terms agreed at Clause 63.3.4.

63.8 No effect on other Contracts

This condition shall not act to extinguish or restrict any rights in respect of, or any entitlement to use, any Intellectual Property rights acquired by either Party under any other contract.

63.9 Agile Tasking

63.10 The Contractor is to identify the foreground and background IP deliverables in each Agile Tasking response at Schedule 14 (Tasking) in accordance with the Condition 63 (Intellectual Property). The parties will amend Schedule 9 (Notification of Intellectual Property Rights (IPR) Restrictions) periodically and when required, as agreed between the parties subject to the amendment processes in this Contract.

64 Limitation of Contractor's Liability

Definitions

In this Condition 64 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

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

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

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

ii) the Data Protection Act 2018;

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

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

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

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

“Term” means the period commencing on [the commencement date / the date on which this Contract is signed / the date on which this Contract takes effect] and ending 31st March 2028 or on earlier termination of this Contract.

64.1 Unlimited liabilities

- a. Neither Party limits its liability for:
 - i death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - ii fraud or fraudulent misrepresentation by it or its employees;
 - iii breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - iv any liability to the extent it cannot be limited or excluded by law.
- b. The financial caps on the Contractor's liability set out in Clause 64.2 below shall not apply to the following:
 - for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to
 - i the Contractor's indemnity in relation to Condition 34 (Third Party IP– Rights and Restrictions) and Condition 63 (Intellectual property)
 - ii the Contractor's indemnity in relation to TUPE;
 - iii breach by the Contractor of DEFCON 532B (SC2) and Data Protection Legislation;

and

- c. The financial caps on the Authority's liability set out in Condition 64 below shall not apply to the following:
 - i for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to Condition 34 (Third Party IP– Rights and Restrictions) ; and
 - ii the indemnity given by the Authority in relation to TUPE shall be unlimited

64.2 Financial limits

- a. Subject to Clause 64.1 and to the maximum extent permitted by Law:
- b. throughout the Term, the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - (i) in respect of DEFCON 76 (SC2) Redacted under FOIA Section 43, Commercial Interests;
 - (ii) in respect of Condition 43 Redacted under FOIA Section 43, Commercial Interests
 - (iii) in respect of DEFCON 611 (SC2) Not Applicable.
- c. without limiting Clause 64.2 and subject always to 64.1 the Contractor's total liability throughout the Term in respect of all other liabilities including third party liabilities (but excluding any Performance Deductions or Availability Deductions paid or payable in accordance, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be Redacted under FOIA Section 43, Commercial Interests
- d. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 64.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 64.2 of this Contract.
- e. Subject to Clauses 64.1, 64.2 and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- f. Clause 64.2 e shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

65. 3 Consequential loss

- a. Subject to Clauses 64.1, 64.2, and 64.3 b neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
 - i indirect loss or damage;
 - ii special loss or damage;
 - iii consequential loss or damage;
 - iv loss of profits (whether direct or indirect);
 - v loss of turnover (whether direct or indirect);
 - vi loss of business opportunities (whether direct or indirect); or
 - vii damage to goodwill (whether direct or indirect), even if that Party was aware of the possibility of such loss or damage to the other Party.
- b. The provisions of Clause 64.3 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- c. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - (i) to any third party;
 - (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- d. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- e. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
- f. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be

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

64.4 Invalidity

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

64.5 Third party claims or losses

- a. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under Condition 34 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - b. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - c. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

64.6 No double recovery

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

65. Ad-Hoc Tasks:

- a. A request for additional services may be identified by the Authority and raised to the Contractor, using Schedule 14 Annex B (Ad-Hoc Tasking Form). This process may only be used for any tasks which are provided under Schedule 2 (Schedule of Requirements) Firm Price elements (Line Items 2,3,4,8,9).
- b. Ad-Hoc Tasks are ad-hoc requirements which can be raised to the Contractor by The Authority in accordance with Schedule 2 Annex A (Statement of Requirement). Annex A - Statement of Work.
- c. The Ad-Hoc Task must follow the process in Schedule 14 Annex B (Ad-Hoc Tasking Form). with all Parts 1-4 being completed.

Ad-Hoc Task Pricing

- d. All pricing for Ad-Hoc Tasks must be in accordance with DEFCON 127 and DEFCON 643 as appropriate, the price breakdown including; Direct Labour (Man hours and wage rates); Overheads, Materials, Bought Out parts, Subcontracted work; Special jigs and tools etc., and profit.

Ad-Hoc Acceptance Criteria and Process

- e. The objectives and acceptance criteria for Ad-Hoc tasks shall be defined in Ad-Hoc Tasking Form (Ad-Hoc-TAF) Part 1 by The Authority.

- f. The Contractor shall document their performance in Ad-Hoc-TAF Part 4 upon completion of the Ad-Hoc task, explaining how objectives and acceptance criteria have been successfully met.
- g. Where particular additional services work or objectives has not been successfully completed within the terms of the Ad-Hoc-TAF, the Contractor must determine the consequence course of action. This shall be detailed in Ad-Hoc-TAF Part 4 for Authority review and approval.

Ad-Hoc Task Payment

- h. Payment to the Contractor will be made on completion of the Ad-Hoc Task. Acceptance is authorised in accordance with Schedule 14 Tasking.
- i. Invoices should be submitted against the unique Agile Task Purchase Order that The Authority provides via CP&F. Under each Agile Task, a new Purchase Order will be issued, and invoices against any other Contractually agreed Firm Priced or Limit of Liability Purchase Order in place will be rejected.

66. Supplier Contractual Obligations

Name	Description	Due	Responsible Party
Obligation Condition 1.c.(2) - Notification of litigation	Notification of; Litigation, arbitration, administrative, adjudication or mediation proceedings against itself or a Subcontractor		Supplier Organisation
Obligation Condition 1.c.(4) - Notification of Winding-up	Notice of any proceedings or steps taken for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator,		Supplier Organisation
Obligation Condition 5.b - Notice of inconsistency between contract documents	If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith		Supplier Organisation
Obligation Condition 16.a - Change of Control of Contractor	Written Notification of any intended, planned or actual change in control of the Contractor, including any Sub-contractors.		Supplier Organisation
Obligation Condition 16.b - Notification of Concern due to Change of Control	advise the Contractor in writing of any concerns due to Change of Control		Supplier Organisation
Obligation Condition 18.a - Contractors Records (reminder)	maintain all records in connection with the Contract for a period of at least six (6) years	Due 3 months before Contract Agreement End Date	Supplier Organisation
Obligation Condition 20.a - Attendance at Progress Meetings	attend progress meetings at the frequency or times specified in the contract	Repeats every 3 months on the First Day of the Month starting 1 month after Contract Agreement Start Date until 0 day after Contract Agreement End Date	Supplier Organisation
Obligation Condition 20.b - Progress Reports	submit progress reports at the times and in the format specified in the contract	Repeats every 3 months on the First Day of the Month starting 1 month after Contract Agreement Start Date until 0 day after Contract Agreement End Date	Supplier Organisation
Obligation Condition 23.e, 24.a, and 24.c - Safety Data Sheet	provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverable		Supplier Organisation

	containing such.		
Obligation Condition 23.f.(6) And Condition 23.g.(1).(b) - Documents relating to design of new MLP Packaging	"All SPIS, new or modified, shall be uploaded by the on to SPIN. where the Supplier is the PDA and registered a list of all SPIS which have been prepared or revised against the Contract; and a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings shall be provided for upload"		Supplier Organisation
Obligation Condition 24.d - Schedule 6 hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements	a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements)	Due 0 day after Contract Agreement Start Date	Supplier Organisation
<u>Obligation</u> Condition- Compliance with hazard reporting requirements for materials or substances are ordnance, munitions or explosives	in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.		Supplier Organisation
Obligation Condition 25.c - Source of Timber and Wood	If requested Evidence that the Timber and Wood-Derived Products supplied to the Authority comply with the requirements of Clause 25.a or 25.b or both.		Supplier Organisation
Obligation Condition 26.a - Certificate of Conformity	Provide a Certificate of Conformity and any applicable Quality Plan		Supplier Organisation
Obligation Condition 36.c - Payment	no later than 30 days from receipt of valid undisputed invoice		Supplier Organisation
Obligation Condition 37.c - Notification of applicable VAT	Notification of VAT liability or changes to it		Supplier Organisation
Obligation Condition 42.c.(2) - Post notification of Termination	List of Unused and undamaged materiel; contractor deliverables in the course of manufacture.		Supplier Organisation
Obligation Clause 42.f - Subcontract Termination	inclusion of Termination Clause in subcontracts over £250,000	Due 0 day after Contract Agreement Start Date	Supplier Organisation

Offer and Acceptance

<p>Name (Block Capitals): Redacted under FOIA Section 40, Personal Information</p> <p>Position: Space DT Commercial Lead For and on behalf of the Authority</p> <p>Authorised Signatory: Brooke Bearfield (Electronic Signed)</p> <p>Date: 22/01/2025</p>	<p>Name (Block Capitals):</p> <p>Position: For and on behalf of the Contractor</p> <p>Authorised Signatory</p> <p>Date:</p>
<p>Effective Date of Contract:</p>	