

FLEET/00317

For

Gas Chromatograph with Mass Detector (GCMS)

Contents

This invitation consists of the following documentation:

- DEFFORM 47 – . The DEFFORM 47 is the document that sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
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Section A – Introduction

Definitions

- A1. This requirement is issued on behalf of the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"). In this Agreement, the Authority is acting as part of the Crown.
- A2. "You / Tenderer" means the economic operator or group of operators in the form of a consortium, including subcontractors, which has been invited to submit a response to this Invitation to Tender.
- A3. "Invitation to Tender" (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response, competitive dialogue or negotiation.
- A4. A "Tender" is the offer that you are making to the Authority.
- A5. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificates(s) of Conformity supplied in accordance with any Quality Assurance (QA) requirements if specified) which the Contractor is required to provide under the contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.
- A6. "Schedule of Requirements" means that part of the contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.
- A7. The "Statement of Requirement" details the technical requirements and acceptance criteria of the Contractor Deliverables. The Statement of Requirement is attached to this DEFFORM 47. This may include the System Requirements Document (SRD).
- A8. "Conditions of Tendering" means the Conditions set out in the DEFFORM 47 that govern the competition.
- A9. "Contract Conditions" means the attached conditions that will govern any resultant contract.
- A10. A "Third Party" is any person who is not an employee of the Tenderer as defined at A2.

Purpose

- A11. The purpose of this ITT is to invite you to propose a solution / best price to our requirement. This documentation explains and sets out the:
- a. tender process and timetable for the next stages of the procurement;
 - b. instructions and conditions that govern this competition;
 - c. information you must include in your Tender and the required format;
 - d. administrative arrangements for the receipt and evaluation of Tenders; and
 - e. Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.
- A12. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.
- A13. This ITT is exempt from OJEU advertising. The requirement was advertised by the Authority in the DCO dated 27th January 2015.

ITT Documentation and ITT Material

- A14. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Material means any other material (including patterns and samples), equipment or software issued to you, or to which you have been granted access, by the Authority

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

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
- b. not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
- d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A15.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
- e. accept that any further disclosure of ITT Documentation, or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;
- f. immediately destroy all ITT documentation, ITT Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
- g. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.

A15. Some or all of the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A15 above.

Tender Expenses

A16. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

Material Change of Control from Supplier Selection

A17. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any sub-contractors at any time during the procurement process. This may affect your right to stay in the competition.

Conditions of Contract

A18.

Consultation with Credit Reference Agencies

A20. The Authority may consult with credit reference agencies to assess your creditworthiness. This information may be used to support and influence decisions to enter into a contract with you.

Other Information

A21. The Tenderers' attention is drawn to the following other information:

1.1 Section B – Key Activities

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

Stage	Date and Time	Initiated By	Submit to:
Invitation to Bidders Conference ¹	N/A	The Authority	All Tenderers
Date for Confirmation of attendance at Bidders Conference ¹	N/A	Tenderers	
Final date for Clarification Questions / Requests for additional information	01/06/15	Tenderers	
Final Date for Requests for Extension ²	28/05/15	Tenderers	
The Authority issues Answers and Clarifications	03/06/15	The Authority	All Tenderers ³
Tender Return	08/06/15	Tenderers	The Tender Board, using DEFFORM 28
Tender Evaluation	10/06/15	The Authority	N/A
Negotiations ⁴	N/A	The Authority	N/A
Reverse Auction	N/A	The Authority	N/A
Trials / Testing	N/A	The Authority	N/A

Notes

1. A Bidders Conference is where the Authority presents the requirement to all Tenderers at the same time. A copy of the presentation will be issued to all Tenderers regardless of attendance. It gives you an opportunity to ask questions about the requirement. The Tenderer must provide the name(s) of those attending the Bidders Conference to the above named contact, by the date shown, so that access to the site can be arranged.
2. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.
3. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other bidders. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date.
4. Negotiations are only permitted under the Negotiated procedures, unless the procurement is exempt from advertising under the Public Contracts Regulations 2006 or Defence and Security Public Contracts Regulations 2011.

1.2 Section C - Instructions on Preparing Tenders

Tenders for Selected Contractor Deliverables

C1.

1.2.1 Construction of Tenders

C2. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP. Prices must be .

C3. To assist the Authority's evaluation please set out your Tender response in accordance with Section D (Tender Evaluation).

Validity

C4. In accordance with F3, your Tender must be valid / open for acceptance for calendar days from the Tender return date. If successful, your Tender must be open for acceptance for a further thirty (30) calendar days.

1.2.2 Variant Bids

C5. You may only submit a variant bid where the Contract Notice states that variant bids will be considered (or where the requirement is exempt from the EU Regulations). A variant bid is a Tender that offers an alternative approach to, or method of, meeting the Authority's requirements as set out in the ITT Documentation. The Authority will give full and careful consideration to any permitted variant bids received. Any variant bid should, as far as possible, meet the attached Conditions of Tendering and Contract Conditions.

C6. Where variant bids are permitted, and you submit a variant bid, you are required to submit two Tenders, one against the Statement of Requirement and one variant bid. The standard Tender must meet the 'minimum' tender evaluation criteria as set out in Section D (Tender Evaluation), and must be submitted in accordance with the Conditions of Tendering. Variant bids will be evaluated in accordance with the tender evaluation criteria as set out in Section D (Tender Evaluation) and must be submitted in accordance with the Conditions of Tendering.

C7. Any Tender made subject to additional or alternative Conditions of Contract alone is not a variant bid. Where the tender evaluation has a pass / fail for the contract conditions the Authority may reject the Tender on the grounds of such additional or alternative contract conditions.

1.3 Section D – Tender Evaluation

Evaluation Matrix – see Annex A

This tender will be evaluated using the MEAT method, on the basis of 60/40 for technical, price. This is a comparative score and the scoring method is worked out as follows :

Total Available Marks (60) x Technical Score

Highest Technical Score

Total Available Marks (40) x Lowest Compliant Price Quoted

Commercial Compliance/Price Quoted

Section E – Instructions on Submitting Tenders

1.3.1 Submission of your Tender

E1. Tenders must be sent to the Tender Board by the date and time stated in the covering letter to this DEFFORM 47. You must provide paper/CD copies unpriced and paper/CD copies priced copies of your Tender and copies of supporting documents. You must not email electronic copies until after the Tender Board has taken place. If you email your Tender before the Tender Board date, your Tender may be excluded from the competition.

E2. You must complete and include DEFFORM 47 Annex A (Offer) (excluding Appendix 1) with your Tender. Where you select 'Yes' to any questions you must attach the relevant information.

E3. You must include the original signed DEFFORM 47 Annex A (Offer) with one paper copy of your Priced Tender.

E4. You must submit your paper and CD copies in a sealed envelope or box. For health and safety reasons, no individual envelope or box should weigh more than 11 kilos.

E5. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope or box that contains your Tender.

E6. If you intend to hand deliver your Tender you must inform the named Commercial Officer of your intention and seek further delivery instructions. Failure to do so may result in your Tender being refused and / or returned.

E7. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.

E8. Please provide audited evidence of your company's financial performance over the last complete accounting year.

1.3.2 Samples

E9. Where samples are required for evaluation purposes you must be prepared to submit them without charge. You should clearly label samples with the following particulars:

- a. your name and address;
- b. the Tender Reference Number and due date for return of the Tender; and

c. the Description and Item Number as shown in the Schedule of Requirements.

E10. You should send any samples to the named Commercial Officer after the Tender return date.

E11. The Authority may retain all samples for twelve (12) months from the Tender return date. After this period, the Authority will destroy the samples unless you specifically state you require their return. The Authority may keep samples associated with a successful Tender indefinitely.

E12. Samples that are consumed will not be returned.

1.4 Section F – Conditions of Tendering

F1. The issue of ITT Documentation is not a commitment by the Authority to place a contract as a result of this competition or at a later stage. Any expenditure, work or effort undertaken prior to an offer of contract and acceptance of that, is a matter solely for your commercial judgement. The Authority reserves the right to:

- a. seek clarification or additional documents in respect of a Tenderer's submission;
- b. disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT;
- c. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic Pre-Qualification Questionnaire (PQQ) or the tender process;
- d. re-assess your suitability to remain in the competition, for example where there is a material change of control from supplier selection;
- e. withdraw this ITT at any time, or to re-invite Tenders on the same or any alternative basis;
- f. choose not to award any Contract as a result of the current procurement process;
- g. award a Contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities; and/or
- h. ask for a price breakdown where the Tender price is low.

F2. The contract will be entered into when the Authority sends written notification of its entry into the Contract. Written notification will be issued, to the address you provide, on or before the expiration of the period specified in paragraph C4 and subject to paragraph F3.

F3. It is a Condition of Tendering that the winning Tenderer holds their Tender open for acceptance for the period stated in C4. This period starts on the day the Authority announces its decision to award the contract to the winning Tenderer in accordance with the Tender. In the event that legal proceedings challenging the award of the contract are instituted, prior to entry into contract, it is a condition of this ITT that you hold your Tender open for acceptance during this period, and up to fourteen (14) days after the result of the legal proceedings. In the event of such legal challenge, the Authority agrees to use all reasonable measures to accelerate proceedings.

1.4.1 Conforming to the Law

F4. You must comply with the UK Competition Act 1998, the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.

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

1.4.2 Bid Rigging and Other Illegal Practices

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

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

1.4.3 Conflicts of Interest

F7. You must notify the Authority immediately of any Conflicts of Interest (COI) that have arisen or that arise at any point prior to contract award decision.

F8.

1.4.4 Government Furnished Assets

F9. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-99. If unsuccessful in this competition, you must seek disposal instructions for that GFA from the named Commercial Officer.

Standstill Period

F10. The Authority is obliged under certain circumstances to allow a space of ten (10) calendar days between the date of dispatch of its notice to Tenderers before entering into a contract, known as the standstill period. This period is to give unsuccessful Tenderers an opportunity to make a legal challenge before the contract is entered into if there has been, or it is alleged that there has been, a breach of the Regulations. The standstill period ends at midnight at the end of the 10th day after the date the DEFFORM 158 is sent. Where this is not a working day it extends to midnight of the next working day.

1.4.5 Publicity Announcement

F11. The Authority will publish notification of the contract and may publish contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition between suppliers. You should complete and return DEFFORM 539A as explained in the DEFFORM 47 Annex A and associated Appendix 1.

F12. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.

F13. Under no circumstances should you confirm to any Third Party the Authority's acceptance of an offer of contract prior to either informing the Authority of your acceptance or the Authority's announcement of the award of contract, whichever occurs first.

1.4.6 Sensitive Information

F14. All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice.

F15. For these purposes, the Authority may share within Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. Contractors taking part in this competition must identify any sensitive material in the DEFFORM 539A and consent to these terms as part of the competition process. This allows the MOD to share information with other Government departments whilst complying with our obligations to maintain confidentiality.

Remedies for Breach of Contract

F16. You should be aware of the contractual remedies set out

1.4.7 Reportable Requirements

F17. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach these returns listed in the Annex and, where you select yes you attach the relevant information.

F18. This is not a test of your answer but failure to complete this part of the Annex makes your Tender non-compliant.

Ministry of Defence

Tender Ref No.

2 Tender Submission Document (Offer)

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

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

Applicable Law				
I agree that any contract resulting from this competition shall be subject to English Law *Where 'No' is selected, Scots Law will apply.				Yes / No*
Total Value of Tender (excluding VAT)				
£				
WORDS				
UK Value Added Tax				
If registered for Value Added Tax purposes, please insert:				
a. Registration No				
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....				
Location of work (town / city) where contract will be performed by Prime:				
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)				
Tier 1 Sub-contractor Company Name	Town / city to be performed	Contractor Deliverables	Estimated Value	SME Yes / No
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			Tenderer's Declaration	
Is the offer subject to the Authority contracting for all the Contractor Deliverables?			Yes / No	
Is the offer made subject to a Minimum Order Quantity?			Yes* / No	
Are the Contractor Deliverables subject to Registered Designs or Patents?			Yes* / No	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions?			Yes* / No	
Are the Contractor Deliverables subject to Overseas Expenditure?			Yes* / No	
Have you complied with all regulations relating to the operation of the collection of custom import duties?			Yes / No	
Have you completed Form 1686 for sub-contracts?			Yes / No	
Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?			Yes / No	
Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)			Yes / No	

If you have not already signed a corporate level DEFFORM 30 have you attached one?	Yes / No		
Have circumstances changed since Supplier Selection Stage? If so is a revised Statement of Good Standing attached?	Yes* / No		
Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No		
Do the Contractor Deliverables contain hazardous items, materials or substances?	Yes* / No		
Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000? http://ozone.unep.org/new_site/en/montreal_protocol.php	Yes* / No		
Are you able to support the objectives of Reservist and other supplier support to the Armed Forces?	Yes* / No		
Have you attached The Bank/Parent Company Guarantee	Yes* / No / Not Required		
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles	Yes / No / Not Required		
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).			
Tenderer's Declaration of Compliance with Competition Law			
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <ul style="list-style-type: none"> a. the offered price has not been divulged to any Third Party, b. no arrangement has been made with any Third Party that they should refrain from tendering, c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion, d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and e. no arrangement has been made with any Third Party otherwise to limit genuine competition. <p>We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.</p> <p>We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.</p> <p>We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.</p>			
Dated this day of Year			
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Signature: (Must be original) </td> <td style="width: 50%; vertical-align: top;"> In the capacity of (State official position e.g. Director, Manager, Secretary etc.) </td> </tr> </table>		Signature: (Must be original)	In the capacity of (State official position e.g. Director, Manager, Secretary etc.)
Signature: (Must be original)	In the capacity of (State official position e.g. Director, Manager, Secretary etc.)		
Name: (in BLOCK CAPITALS) duly authorised to sign this Tender for and on behalf of: (Tenderer's Name)	Postal Address: Telephone No: Registered Company Number:		

2.2 Further Information on Mandatory Declarations

2.2.1 Part Tender

1. Under Condition of Tendering F1, the Authority reserves the right to order some or part of your Tender. If your offer is subject to the Authority contracting for all the Contractor Deliverables select 'Yes' and provide further details in your Tender.

2.2.2 Minimum Order Quantities

2. Where your offer is offer subject to minimum order quantities select 'Yes' and provide further details in your Tender.

2.2.3 Notification of Inventions etc.

3. Where the Contractor Deliverables are subject to any Registered Intellectual Property Rights select 'Yes'.

4. You must clearly state in your Tender any Contractor Deliverable to be produced under any resultant contract that is, or is likely to be, the subject of a Patent, a Registered Design right or an application for either, or an unregistered design right, owned by either yourself or a Third Party. This includes anything of this nature affecting the performance of any resultant contract or subsequent use of any Contractor Deliverable by the Authority. You must specifically draw attention to:

- a. any Patent or Registered Design (or application for either) or unregistered design right you own or control which is or appears to be relevant to the Contractor Deliverables, the use of which by or on behalf of the Authority may give rise to a claim under Sections 55 or 56 of the Patents Act 1977, or Section 12 of the Registered Designs Act 1949, or Section 240 of the Copyright, Designs and Patents Act 1988;
- b. any allegation made against you, whether by claim or otherwise, of an infringement of an intellectual property right (whether a Patent, Registered Design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
- c. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
- d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b..

5. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.

6. If you have previously provided information under paragraphs 4 and 5 you can provide details of the previous notification, updated as necessary to confirm their validity.

2.2.4 Notification of Foreign Export Control Restrictions

7. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant contract, you must provide the following information in your Tender:

- a. Whether all or part of any Contractor Deliverables are or will be subject to:
(1) a non-UK export licence, authorisation or exemption; or

(2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

b. If requested, a summary of every existing expected or known licence and restriction referred to in paragraph 7.a. This includes any related obligation or restriction and the extent they place an obligation or restriction on the Authority, including:

- (1) the exporting nation and the export licence number, where known;
- (2) the Contractor Deliverables affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access by Third Parties, or by individuals based on their nationality, to the Contractor Deliverables; and
- (6) any specific restrictions on re-transfer or re-export to Third Parties of the Contractor Deliverables of anything delivered or used in the performance or fulfilment of them.

c. If requested, you must provide an outline of your mitigation plan to manage performance risks on any resultant contract based on paragraph 7a.

8. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraphs 7.a and 7.b. If you are unable to obtain adequate information, you must state this in your Tender when responding to paragraph 7a and 7b.

9. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately.

10. If you have previously provided information under paragraph 7 you can provide details of the previous notification and confirm the validity.

11. This does not include any Intellectual Property specific restrictions mentioned in paragraph 7.

12. It is the Winning Tenderer(s) responsibility to ensure they comply with any restrictions stated in paragraph 7 during the life of the contract. This includes any restrictions the Authority has explicitly stated / clarified in any ITT documentation.

13. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 7.

2.2.5 Overseas Expenditure

14. You must provide details in your Tender of any expenditure outside the UK, including:

- a. country in which sub-contract is placed / to be placed;
- b. name, division and full postal address of sub-contractor;
- c. value of sub-contract; and
- d. date sub-contract placed / to be placed.

15. Should you propose the supply of Articles of US origin the export of which from the USA are subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details in your Tender. This will allow the Authority to make a decision whether the export can or cannot be made under the auspices of the US-UK Defence Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final

decision whether you want to use that route for the export concerned if you are awarded the contract.

2.2.6 Import Duty

16. Council Regulation (EC) No 150/2003 suspends Custom duties on a range of military weapons and equipment. For the purposes of this competition for any Contractor Deliverables eligible for suspension of import duties and not yet imported into the European Union, you must provide prices excluding **and** including Import Duty.

17. Where the Contractor Deliverables are exempt under Council Regulation (EC) No. 150/2003, the Authority will issue a certificate for those Contractor Deliverables eligible for suspension of import duties.

18. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the collection of import duties. This includes but is not limited to obtaining Her Majesty's Revenue and Customs (HMRC) end use relief authorisation.

2.2.7 Sub-contracts Form 1686

19. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of either Reportable OFFICIAL or OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the [Security Policy Framework – Contractual Process](#) chapter. You can access a word version of Form 1686 on GOV.UK

at: [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322603/Contractual Process - Appendix 5 form.doc](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322603/Contractual_Process_-_Appendix_5_form.doc).

2.2.8 Small and Medium Enterprises

20. The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) initiative; its aspiration is that 25% of spend, direct and through the supply chain, should go to SMEs by 2015. The MOD uses the EU definition of an SME.

21. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their subcontractors are encouraged to make their own commitment and register with the Prompt Payment Code at: <http://www.promptpaymentcode.org.uk>.

22. Suppliers are also encouraged to work with the Authority to support the wider SME initiative. The link below to the Cabinet Office website provides information on the Government's Crown Representative for SMEs, a link to the definition of an SME and details on the SME initiative. <https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively/supporting-pages/making-sure-government-gets-full-value-from-small-and-medium-sized-enterprises>.

23. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 in the MOD Contracts Bulletin and further details can be obtained directly from:

BiP Solutions Ltd

Web address: www.contracts.mod.uk

Tel No: 0845 270 7099

2.2.9 Transparency, Freedom of Information and Environmental Information Regulations

24. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the Prime Minister's letter of May 2010

(<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>) and the information contained within .

25. Before publishing the contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").

26. You should complete the attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A), explaining which parts of your Tender you consider are commercially sensitive. This includes providing a named individual who may be contacted with regard to FOIA and EIR.

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

2.2.10 Electronic Purchasing

28. Tenderers must note that use of the Authority's Purchase to Payment (P2P) system is a mandatory requirement for this contract. You can view information on the P2P system and the methods to connect at www.d2btrade.com. Please feel free to consult the service provider on connectivity options. The Winning Tenderer will be required to sign DEFFORM 30 (Electronic Transaction Agreements) at a corporate level - if you have not done so before - and unconditionally accept DEFCON 5J (Unique Identifiers), DEFCON 129J (The Use of Electronic Business Delivery Form); and DEFCON 522J (Payment under P2P). Where Standardised Contracting 2 (SC2) or Standardised Contracting 3 (SC3) conditions are used, unconditional acceptance of all references to P2P in clause G1 is required. A failure to do so will result in your tender being non-compliant.

2.2.11 Change of Circumstances

29. Where circumstances have changed with regard to a Statement Relating to Good Standing or you have not previously submitted a Statement Relating to Good Standing select 'Yes' and submit a Statement Relating to Good Standing with your Tender.

2.2.12 Asbestos, Hazardous Items and Depletion of the Ozone Layer

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

2.2.13 Reservist and other Supplier Support to the Armed Forces

31. The 2010 Strategic Defence and Security Review set out what our Armed Forces will look like and outlined the role of the Reserve Forces within that Future Force. Reserves will have a greater role, providing both a larger proportion of the force and Defence capabilities in certain specialist areas that are not practical or cost effective to maintain full time.

32. The MOD wishes to have a more sustained and enduring relationship with suppliers, on Reservist and other military personnel objectives, based on mutual benefit. The personnel objectives include:

- a. Employment of service leavers
- b. Employment of wounded, injured or sick veterans
- c. Employment of the partners of service personnel
- d. Helping local cadet units
- e. Support to Reservist employees
- f. Encouragement of Reserve service

33. Of particular interest to Defence is the need to have more Reservists employed by reserves supportive employers as described in Chapter 4 of the White Paper, 'Reserves in the Future Force 2020; Valuable and Valued' available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210470/Cm8655-web_FINAL.pdf

34. The Authority therefore encourages all Tenderers, and their suppliers, to:
- consider whether they are able to support these objectives; and, if they are
 - sign the Corporate Covenant, declaring their support for the Armed Forces community.
35. Guidance on the various ways you can demonstrate your support through the Corporate Covenant is at: [The corporate covenant - Detailed guidance - GOV.UK](#).
36. Specific guidance on how you can support the Reserve Forces, what your support means in practice, and what the potential benefits are for you can be found at: www.sabre.mod.uk.
37. Please provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included in the websites.
- Email address: covenant-mailbox@mod.uk
Address: Armed Forces Covenant Team
Zone D, 6th Floor, Ministry of Defence,
Main Building, Whitehall, London, SW1A 2HB
38. Where you decide to contribute to meeting the personnel objectives above, you should also report the outcomes of such contributions to the above address so they can be recorded and acknowledged.
39. Paragraphs 31 – 38 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender evaluation, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support and we are committed to working with you to this end.

2.2.14 Bank or Parent Company Guarantee

40.

A bank or parent company guarantee is not required.

Statement of Requirement

1.1 The EIH laboratory at INM has a requirement for a Gas Chromatograph with Mass Detector (GCMS) to replace a 16 year old Perkin Elmer Auto System XL GCMS which is life expired and too inflexible to cope with current sample types and workloads. The system is used primarily for analysis of Tenax TA tubes by thermal desorption using a Perkin Elmer ATD 650 which is to be retained as it is a recent purchase and still fully supported but is occasionally required to run liquid samples. The laboratory currently uses three further Perkin Elmer GCMS systems for this work which are also being retained. It is a requirement that the new GCMS system is fully compatible with the existing equipment and able to operate with the retained ATD 650 thermal desorber.

1.2. The key requirements for the new system are as follows

- The system must be suitable for the analysis of Volatile Organic Compounds (VOC's) collected onto standard Perkin Elmer type Tenax TA Thermal desorption

tubes. This is essential as the EIH laboratory has an existing stock of 2000 of these tubes supplied by Perkin Elmer and Markes International which represents a considerable investment in sampling equipment. These tubes will not be replaced so systems requiring the use of other sizes of Tenax tube will not be entertained.

- The system must be also be capable of analysing VOC's in liquid solutions
- The system must also allow the analysis of VOC's in whole air samples collected using both vacuum canisters of the Restek type and "Tedlar" sample bags. The retained ATD 650 does not allow this and will require modification.

2. Detailed specification

2.1 Thermal Desorber / whole air canister sampler. As stated above it is the intention to retain the existing Perkin Elmer ATD 650 thermal desorption system as this is a current model and fully supportable for the foreseeable future. This will require that the following;

- The ATD 650 must be fully integrated into the GCMS system hardware and software to produce a system that is able to work automatically and unattended as analysis is frequently set to run overnight.
- It should be noted that the existing ATD 650 adds internal standard from a gas cylinder to each tube during analysis.
- An "Online mode" is to be added as a modification to the existing ATD 650 and is to operate in the same way as the two ATD 650's which were modified when supplied in 2011. The modification allows the analysis of whole air samples collected in Restek canisters and "Tedlar" sample bags

2.3 Gas chromatograph (GC)

2.3.1 The GC must be fully compatible with the ATD 650, have a programmable oven with a temperature range of up to 330°C and have with fast cooling between runs. The oven must be able to accommodate 2 columns and be able to switch the effluent flow from the thermal desorption system to either of the columns. Switching must be software controlled and the device to allow flow switching between columns must be configured to allow 100 % of the ATD flow to be switched between either column during a run.

2.3.2 The GC must also have an automated sample injection system for liquid samples with a programmable split / split-less injector capable of being heated to 250°C. The system should include an autosampler with a capacity of a minimum of 100 samples..

3. Detectors. The system must have the following two detectors

- A mass selective detector system (MS) capable of EI sample ionisation. This will probably be a quadruple system with the following specifications.
 - A mass range of 1.0-1200 amu

- Mass stability of +/- 0.1 m/z over a 48 hour period
- Simultaneously collect total ion and single ion data
- The source is to have a temperature range of 50°C to 350°C
- Fast pump down from a vented state to allow quantitative use within 2 hours
- A flame ionization detector for general use. No special requirements over and above the usual performance for this type of detector.

4. Software

4.1 The EIH laboratory has a number of existing systems running under Perkin Elmer's Turbomass software v5.4.2. The proposed system if it is not able to run this software must have the following characteristics.

- The software must allow fully automated and integrated operation of both the GC-MS and thermal desorption system.
- The software must include automated tuning of the MS
- Must be capable of being connected to a LIMS system.
- Must have the ability to upload existing methods to generate sample run lists.
- The software must be able to produce reports in a CSV file from both a calibration of target compounds and of non-target compounds following searching of the NIST database.

5. Consumables. The following consumables are to be supplied;

- One air toxics trap.
- One tenax TA trap.
- The GC must be supplied with two each of the following two columns
 - Restek Rtx-1 – 30m x 0.32mm ID
 - Restek Rxi – 624Sil MS – 30m x 0.32mm ID

6. Training

The proposed system must include training in the operation, maintenance and troubleshooting of the system for 2 operators.

7. Modification

Modification of ATD 650 for analysis of whole air samples or alternative Thermal Desorber for TD tubes with capability for analysis of whole air samples.

THE ELECTRONIC TRANSACTIONS AGREEMENT

Between

And

SECRETARY OF STATE FOR DEFENCE

MINISTRY OF DEFENCE
Electronic Transactions Agreement

THIS AGREEMENT comprises the General Clauses for electronic transactions.

The terms of this Agreement shall govern the conduct and methods of operation between the parties in relation to the electronic exchange of data for the purposes of or associated with the supply of Contractor Deliverables pursuant to those contracts which reference it. Except as otherwise provided in the appended terms, the terms do not apply to the substance of the data transfer. This Agreement shall have the date of and be effective from the date of the last signature hereunder.

AGREED

For and on behalf of:

For and on behalf of:

Secretary of State for Defence

Signature: _____

Signature: _____

Name: _____

Name: **Ailsa Bull**

Position: _____

Position: **Commercial Manager**

Date: _____

Date: _____

Whose Registered Office is at:

Whose Address is:

Room 303, Jago Road
Building 1/080, PP73a
HMNB Portsmouth
PO1 3LU

Agreement reference number:

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Electronic Transactions
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1. Definitions

- a. In this Agreement, in addition to the definitions in DEFCON 501 (or Schedule 1 of Standardised Contracting Templates 2 (SC2) or 3 (SC3)):
- i. **"Acknowledgement of Receipt"** means the procedure by which, on receipt of a Message, the logical presentation or form are checked, and a corresponding acknowledgement or rejection is sent by the receiver;
 - ii. **"Adopted Protocol"** means the method(s) for the Interchange of Messages between the respective Parties and an intermediary appointed pursuant to Clause 8 for the presentation and structuring of the transmission of Messages as defined in Annex A
 - iii. **"Associated Data"** means that data which accompanies a Message but may not be in the Adopted Protocol; such data may include header information, protective markings, designations, Electronic Signatures, date and time of transmission and of receipt;
 - iv. **"Data"** means all Messages and Associated Data transmitted, received or stored in a digital form;
 - v. **"Data File"** means a single record or collection of data records that are logically related to each other, and are handled as a unit;
 - vi. **"Data Log"** means a complete record of all Data Interchanged representing the Messages and their Associated Data between the parties;
 - vii. **"Purchase to Payment Gateway" or "ePurchasing"** mean the service provided by the party under contract to the Authority to manage the electronic receipt, transmission and translation of messages exchanged between the Authority and its suppliers;
 - viii. **"Electronic Signature"** means anything in electronic or digital form incorporated into or otherwise logically associated with an electronic communication for the purpose of establishing the authenticity of the communication or its integrity, or both;
 - ix. **"Expunge"** means the removal of the information contained in a Message document such that the content of the Message is removed from the system in a manner which precludes its retrieval (but with no obligation in respect of the record of its receipt);
 - x. **"Functional Acknowledgement"** means an acknowledgement Message by the receiving party's computer software application which automatically confirms the receipt of a Message at the moment of receipt;
 - xi. **"Interchange"** means the electronic exchange of Data between the Parties using the Adopted Protocol;

- xii. "**Message**" means Data structured in accordance with the Adopted Protocol and transmitted electronically between the parties including where the context admits any part of such Data.

2. Scope

- a. The Messages to be exchanged under this Agreement are detailed in the Message Implementation Guidelines referred to in Annex A, which also includes guidance on how these should be profiled.
- b. This Agreement shall apply to all Messages passed between the parties using the Adopted Protocol. The parties agree that all such Messages shall be transmitted in accordance with the provisions of this Agreement.
- c. The parties may agree additional or alternative terms to reflect additional or different requirements which they may have for the Interchange of Messages, which terms shall form part of this Agreement.

3. Security of Data

- a. Each of the parties shall:
 - i. ensure as far as reasonably practicable, that Data is properly stored, is not accessible to unauthorised persons, is not altered, lost or destroyed and is capable of being retrieved only by properly authorised persons;
 - ii. subject to the provisions of Sub-Clause 8.a. ensure that, in addition to any security, proprietary and other information disclosure provision contained in the Contract, Messages and Associated Data are maintained in confidence, are not disclosed or transmitted to any unauthorised person and are not used for any purpose other than that communicated by the sending party or permitted by the Contract;
 - iii. protect further transmission to the same degree as the originally transmitted Message and Associated Data when further transmissions of Messages and Associated Data are permitted by the Contract or expressly authorised by the sending party.
- b. The sending party shall ensure that Messages are marked in accordance with the requirements of the Contract. If a further transmission is made pursuant to Sub-Clause 3. a. iii. the sender shall ensure that such markings are repeated in the further transmission.
- c. The parties may apply special protection to Messages by encryption or by other agreed means, and may apply designations to the Messages for protective Interchange, handling and storage procedures. Unless the parties otherwise agree, the party receiving a Message so protected or designated shall use at least the same level of protection and protective procedures for any further transmission of the Message and its Associated Data for all responses to the Message and for all other communications by Interchange or otherwise to any other person relating to the Message.

- d. If either party becomes aware of a security breach or breach of confidence in relation to any Message or in relation to its procedures or systems (including, without limitation, unauthorised access to their systems for generation, authentication, authorisation, processing, transmission, storage, protection and file management of Messages) then it shall immediately inform the other party of such breach. On being informed or becoming aware of a breach the party concerned shall:
 - i. immediately investigate the cause, effect and extent of such breach;
 - ii. report the results of the investigation to the other party;
 - iii. use all reasonable endeavours to rectify the cause of such breach.
- e. Each party shall ensure that the contents of Messages that are sent or received are not inconsistent with the law, the application of which could restrict the content of a Message or limit its use, and shall take all necessary measures to inform without delay the other party if such an inconsistency arises.

4. Authenticity of Messages

- a. Each Message shall identify the sending party and receiving party and its authenticity shall be verified by the means specified in the Adopted Protocol.
- b. The parties agree not to contest the authenticity, admissibility or enforceability of Messages under the provisions of any applicable law relating to whether certain agreements are in writing and signed by the party to be bound thereby. Messages, when printed from electronic files and records established and maintained in the normal course of business will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form.

5. Integrity of Messages

- a. The sending party shall ensure as far as is reasonably practicable that all Messages are complete, accurate and secure against being altered in the course of transmission and, subject to Sub-Clauses 5.b. 5.d. and 15, shall be liable for the direct consequences of any failure to perform its obligations under this Sub-Clause 5.a.
- b. Each party will accord all Messages the same status as would be applicable to a document or to information sent other than by electronic means, unless a Message can be shown to have been corrupted as a result of technical failure on the part of a machine, system or transmission line involved in the process of Interchange.
- c. Upon either party becoming aware that a Message has been corrupted or if any Message is identified as incorrect then that party shall inform the other and the sending party shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. Any liability of the sending party which would otherwise accrue from its failure to comply with the provisions of this Sub-Clause 5.c. shall not accrue if Sub-Clause 5.d. applies.

- d. Notwithstanding Sub-Clauses 5.a. and 5.c. the sending party shall not be liable for the consequences of a corrupted or incorrect transmission or any failure to re-transmit if the error is or should in all the circumstances be reasonably obvious to the receiving party. In such event the receiving party shall immediately notify the sending party thereof.
- e. If the receiving party has reason to believe that a Message is not intended for them they shall notify the sending party and if so requested by the sending party shall, so far as is reasonably possible, Expunge from its system the information contained in such Message.

6. Acknowledgement of Receipt of Messages

- a. Except where the Interchange of Messages takes place solely within ePurchasing, immediately upon receipt of a Message at its receipt computer, the receiving party's receipt computer shall automatically transmit a Functional Acknowledgement in return and additionally the sender may request an Acknowledgement of Receipt.
- b. An Acknowledgement of Receipt is required unless stipulated in the Contract to the contrary.
- c. Where an Acknowledgement of Receipt is required, the receiver of the Message to be acknowledged shall ensure that the acknowledgement or a rejection is sent within the time limit specified in the Contract or in Annex A to this Agreement if applicable or, if no limit is specified, within a reasonable period of time.
- d. Where an Acknowledgement of Receipt is required, if the sender does not receive the Acknowledgement of Receipt or rejection within the time limit applicable, or, if no time limit is specified, within a reasonable time, the sender may, upon giving notice to the receiver, treat the message as having no force or effect.
- e. Acknowledgement in accordance with this clause shall not be deemed to constitute acceptance of any offer contained in any Message. Acceptance of an offer contained in any Message which is intended to create a legally binding obligation shall be in accordance with the provisions of the Contract.
- f. A Message shall be understood to have been received from the sender:
 - i. if transmitted between 09.00 and 17.00 hours on a business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or
 - ii. if transmitted at any other time, at 09.00 on the first business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or
 - iii. if the Interchange of Messages takes place solely within ePurchasing, at the moment a Message is completed by pressing the submit button if transmitted between 09.00 and 17.00 hours on a business day (recipient's time) or if transmitted at any other time, at 09.00 on the first business day (recipient's time).

7. Storage of Data

- a. Each party shall maintain a Data Log or shall cause an intermediary to maintain a Data Log recording all Messages and Associated Data as sent and received without modification.
- b. The Data Logs may be maintained as Data Files on computer or by other suitable means provided that a copy of the Data can be readily retrieved and presented in human readable form. Procedures to enable a secure means of archiving Data Logs shall be detailed in the Contract or agreed between the parties.
- c. Each party shall be responsible for making such arrangements as may be necessary for the Data contained in its Data Log to be prepared as a correct record of the Messages and Associated Data as sent or received by that party. In the event that a party has destroyed its Data Log, the other party shall have no obligation to furnish it with any information recorded in its Data Log.
- d. Each party shall ensure that:
 - i. it has appointed an identifiable person responsible for the operation and management of that party's data processing system concerned with the interchange of Messages; and
 - ii. the person responsible for the data processing system concerned with the Interchange of Messages, or such other person as may be agreed by the parties or required by law, shall certify that the Data Log and any reproduction made from it is correct and complete.

8. Intermediaries

- a. Subject to Clause 15 if either party uses the services of an intermediary to transmit, log, store or process Messages, that party shall be responsible for any acts, failures or omissions by that intermediary in its provision of the said services as though they were his own acts, failures or omissions. The Authority shall be liable as between the Authority and the Contractor for any acts, failures or omissions of ePurchasing in its provision of the services of an intermediary as though they were the acts, failures or omissions of the Authority.
- b. Any party using an intermediary shall ensure that it is a contractual responsibility of the intermediary that no change in the substantive data content of the Messages to be transmitted is made and that such Messages are not disclosed to any unauthorised person.

9. Term and Termination

- a. This Agreement shall take effect as of the date of last signature and shall remain in full force and effect until terminated by either party upon giving one month's notice to the other. Any termination of this Agreement shall not affect contracts that call it up by reference prior to that termination.

- b. Notwithstanding termination for any reason, Clauses 3, 7 and 8 shall survive termination of this Agreement.
- c. Termination of this Agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination.

10. Interruption of Service

- a. The parties acknowledge that service may be interrupted at times during the course of this Agreement. In such circumstances, the parties shall immediately consult each other on the use of alternative forms of communication to be used, including facsimile, telephone or paper. Any alternative forms of communication shall not be controlled by this Agreement.
- b. Applicable only in the absence of a relevant clause in the Contract:
 - i. Subject to Sub-Clause 10. a., a party shall not be deemed to be in breach of this Agreement by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any interruption of service or incident of Force Majeure as described in Sub-Clause 10.b.iii. below, of which he has notified the other party without delay
 - ii. The time for performance of that obligation shall then be extended accordingly. Sub-Clause 10. b. i. shall not operate so as to relieve liability for any matter which is a breach of Clause 3 of this Agreement
 - iii. For the purposes of this Agreement, Force Majeure means, in relation to either party, any circumstances beyond the reasonable control of that party.

11. Invalidity and Severability

In the event of a conflict between any provision of this Agreement and any law, regulation or decree affecting this Agreement, the provisions of this Agreement so affected shall be regarded as null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree but otherwise it shall not render null and void other provisions of this Agreement.

12. Notices

The provisions of DEFCON 526 (or Condition H3 if you are using SC2 / SC3) shall apply.

13. Precedence

In the event of any conflict between the terms of this Agreement and the Contract, then the terms of the Contract shall prevail in relation to the substance of the Messages in connection with the Contract.

14. Virus Control

Each party and its intermediary (if any) shall operate at all times a virus control check for all Interchange of Messages.

15. Limit of Liability

- a. Each party agrees that, in relation to any claim, or series of connected claims, including claims for negligence but excluding claims resulting from wilful misconduct, arising from any delay or omission or error in the electronic transmission or receipt of any message pursuant to this Agreement, the liability of either party to the other shall be limited to £10,000 (exclusive of VAT), or where the Contract provides otherwise, to such other amount as is specified in the Contract.
- b. For the avoidance of doubt, liability in relation to any claim arising under the Contract shall be determined in accordance with the Contract.
- c. In the event that a delay, omission or error as referred to in Clause 15a occurs, which causes a delay in the performance of an obligation by either party under the Contract, the period for the performance of that obligation by the affected party shall be extended by a period of time equal to the period of any such delay, omission or error.

16. Entire Agreement

This Agreement, including Annex A and any documents expressly referred to in this Agreement, represents the entire agreement between the parties and supersedes all other agreements oral or written, and all other communications between the parties relating to the subject matter hereof provided that nothing in this Clause shall exclude any liability for fraudulent misrepresentation.

Message Implementation Guidelines (MIGs)

The current and applicable MIG as approved by the MOD within this agreement can be viewed on the D2BTrade Website: <http://www.d2btrade.com>.

RELEVANT FORM DETAILS FOR DEFCON 522 PAYMENT CONDITION

Contract Number: FLEET/00317

[illegible]

¹ When completing Column 3, "Representative of the Authority", please ensure, wherever practicable, this is not one person and that there are arrangements for payment approval forms to be signed when the usual "Representative" is absent.

² The sentence is to be used when appropriate, e.g. when DBA is the Bill Paying Branch, otherwise the sentence should be deleted. In particular, the sentence is not appropriate when the Contract contains DEFCON 5J, even when DBA is the Bill Paying Branch, and should be deleted in that case.



Ministry of Defence

Contract No: FLEET/00317

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

And

Contractor Name and Address

**Def Comrcl CC-Navy
MOD Commercial
Room 303, 3rd Floor, Bldg 1/080
PP73a, Jago Road
HMNB Portsmouth
Hants
PO1 3LU**

**Email Address: defcomrclcc-navy20@mod.uk
Telephone Number: 02392 726810
Facsimile Number: 02392 727776**

**Email Address:
Telephone Number:
Facsimile Number:**

Schedule 1 - Definitions of Contract

AG173	means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;
Articles	means the Contractor Deliverables (goods and / or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (This definition only applies when DEFCON's are added to these Conditions);
Authority	means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
Authority's Representative(s)	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b;
Business Day	means any day excluding: <ul style="list-style-type: none">a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; andc. such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least ten (10) Business Days in advance;
Child Labour Legislation	means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
Collect	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause F1.c and Collected and Collection shall be construed accordingly;
Conditions	means the terms and conditions set out in this document;
Consignee	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
Consignor	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with clause A2 (Amendments);
Contract Price	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full

	and proper performance by the Contractor of its obligations under the Contract.
Contractor	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
Contractor Commercially Sensitive Information	means the Information listed in the completed Schedule 9 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
Contractor Deliverables	means the goods and / or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports;
Control	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none"> a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor; <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
CPET	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy
Crown Use	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
DAB Form 10	means the MOD invoice summary form;
DBS Finance	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
DECS P2P	means the MOD electronic ordering, receipting and payment system;
DEFFORM	means the MOD DEFFORM series which can be found at https://www.aof.mod.uk ;
DEF STAN	means Defence Standards which can be accessed at https://www.dstan.mod.uk ;
Deliver	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with clause F1 and Delivered and Delivery shall be construed accordingly;
Delivery Date	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;

Denomination of Quantity (D of Q)	means the quantity or measure by which an item of material is managed;
Design Right(s)	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
Diversion Order	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
Effective Date of Contract	means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;
Evidence	means either: <ul style="list-style-type: none"> a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
Firm Price	means a price (excluding VAT) which is not subject to variation;
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
Independent Verification	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
Information	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;
Legislation	means in relation to the United Kingdom: <ul style="list-style-type: none"> a. any Act of Parliament; b. any subordinate Legislation within the meaning of Section 21 of the Interpretation Act 1978; c. any exercise of the Royal Prerogative; or d. any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
Military Level Packaging	Packaging that by the nature of the packaged item, or envisaged transport / movement or handling within the military supply chain

	and requires enhanced protection beyond that which commercial packaging normally provides;
Military Packaging Accreditation Scheme (MPAS)	is a MOD sponsored scheme to accredit military packaging designers capable of producing SPIS designs acceptable to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS / DR14. MPAS detail is available from: DESJSCSCM-EngTLS-Pkg@mod.uk ;
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
MOD Form 640	means the MOD Form in 5 separate parts, each with a different role in the Delivery / Collection and payment process, which may be obtained from the address specified for obtaining MOD forms and documentation in Schedule 3 (Contract Data Sheet);
NATO	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Notices	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the articles for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Primary Packaging Quantity (PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> a. pre-consumer reclaimed wood and wood fibre and industrial by-products; b. post-consumer reclaimed wood and wood fibre, and driftwood; c. reclaimed timber abandoned or confiscated at least ten years previously, it excludes sawmill co-products;

Schedule of Requirements	means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables, to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;
Short-Rotation Coppice	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;
Specification	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);
STANAG 4329	means the publication NATO Standard Bar Code Symbolologies which can be sourced at https://www.dstan.mod.uk/faqs.html ;
Subcontractor	means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);
Supported Businesses	means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;
Timber and Wood-Derived Products	means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;
Transparency Information	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;
Virgin Timber	means Timber and Wood-Derived Products that do not include Recycled Timber.

Schedule 3 Contract Data Sheet for Contract No:

Clause A9 Governing Law	<p>Contract to be governed and construed in accordance with: (one must be chosen)</p> <p>English Law <input checked="" type="checkbox"/></p> <p>Scots Law <input type="checkbox"/> Clause A9.b shall apply</p> <p>Solicitors or other persons based in England and Wales irrevocably appointed for Foreign Contractors in accordance with Clause A9.f (if applicable) are as follows:</p>
Clause A22 Termination for Convenience	<p>The Notice period for terminating the Contract shall be Business Days.</p>
Clause A24 Contract Period	<p>The Contract expiry date shall be:</p>
Clause B1.a.(2) Contractor's Obligations – Quality Assurance	<p>Is a Deliverable Quality Plan required for this Contract?</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.</p> <p>Other Quality Assurance Requirements:</p>
Clause B6 Marking of Contractor Deliverables	<p>Special Marking requirements:</p>
Clause B8 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances	<p>A completed Schedule 6 (Hazardous Articles, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>a) The Authority's Representative (Commercial)</p> <p>b) DSEA-Land-MovTpt-DGHSIS@mod.uk</p> <p>or: if only a hardcopy is available to:</p> <p>a) The Authority's Representative (Commercial)</p>

	To be Collected by the Authority (See Box F1.c)
Clause F1.b (Delivery by the Contractor) (for Schedule 2 Items)	<p>(Where applicable, see Box F1.a above)</p> <p>Special Delivery Instructions (Clause F1.b.(2)) :</p> <p>Each consignment of the Contractor Deliverables to be accompanied by (Clause F1.b.(3)):</p> <p>Line Items MOD Form 640</p> <p>Line Items DEFFORM 129J</p> <p>Line Items Delivery Note</p>
Clause F1.c (Collection by the Authority) (for Schedule 2 Items)	<p>(Where applicable, see Box F1.a above)</p> <p>Special Collection Instructions (Clause F1.c.(2)):</p> <p>Each consignment of the Contractor Deliverables to be accompanied by (Clause F1.c.(3)):</p> <p>Line Items MOD Form 640</p> <p>Line Items DEFFORM 129J</p> <p>Line Items Delivery Note</p> <p>Consignor Address(F1.c.(4)) :</p> <p>Line Items Address</p> <p>Line Items Address</p> <p>Consignee Address Details (for the purposes of Clause B7.b.(1)):</p> <p>Line Items Address Details</p> <p>Line Items Address Details</p> <p>Line Items Address Details</p>
Clause F3.b Rejection Note: If no period is inserted here the time period shall be twenty (20) Business days)	Time limit for rejection of the Contractor Deliverables shall be Business Days.
Clause F5 Self to Self Delivery	Is Self to Self Delivery required:

	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If Yes, Delivery address applicable:</p>
Clause G1.a Payment	<p>DEFFORM 30 Agreement refers (if applicable)</p> <p>Reference</p> <p>Date</p>
Clause G1.c.(2) and G1.c.(3) Payment (for Schedule 2 Items)	<p>Payment is to be enabled by:</p> <p>Line Items DECS P2P refers</p> <p>Line Items MOD Form 640 refers</p> <p>Line Items AG173 refers</p> <p>(Address to which MOD Form 640 or AG173 (approval for payment) should be sent if different from Consignee):</p>
Clause H1.a Progress Monitoring	<p>The Contractor shall be required to attend the following meetings:</p> <p>Type:</p> <p>Frequency:,</p> <p>Location:,</p>
Clause H1.b Progress Reports	<p>The Contractor is required to submit the following Reports:</p> <p>Type:</p> <p>Frequency:</p> <p>Method of Delivery:</p> <p>Delivery Address:</p>
Clause H2.b Authority's Representatives	<p>The Authority's Representatives for the Contract are as follows:</p> <p>Commercial:</p> <p>Project Manager:</p> <p>Payment</p>
Clause H3.a.(5) Notices	<p>Notices served under the Contract can be transmitted by electronic mail</p>

	Yes <input type="checkbox"/> No <input type="checkbox"/>
Other Addresses and Other Information (Covers forms and publications addresses and official use information)	See Annex A to Schedule 3 (DEFFORM 111)

**Schedule 4 - Contract Change Process Procedure (i.a.w. clause A.2.b)
for Contract No:**

1. Authority Changes

- i. The Authority has the right to propose changes ("Authority Changes") to the Contractor Deliverables in accordance with this Schedule 4. The Authority shall not propose an Authority Change which:
 - (1) would require the Contractor Deliverables to be performed in a way that infringes any Legislation or is inconsistent with good industry practice;
 - (2) would materially and adversely affect the health and safety of any person;
 - (3) would require the Contractor to implement the change to the Contractor Deliverables in an unreasonable period of time;
 - (4) would (if implemented) materially and adversely change the nature of this Contract; and / or
 - (5) the Authority does not have the legal power or capacity to require the implementation of.
- ii. If the Authority requires an Authority Change, it must serve a Notice (an "Authority Notice of Change") on the Contractor.

2. Authority Changes – Notice of Change

The Authority Notice of Change shall:

- a. set out the change in Contractor Deliverables required in sufficient detail to enable the Contractor to calculate and provide a change proposal identifying the change in Contract Price as a result of the change in accordance with clause 3 below (the "Change Proposal"); and
- b. require the Contractor to provide the Authority with the Change Proposal within fifteen (15) Business Days of receipt of the Authority Notice of Change.

3. Authority Changes – Change Proposal

As soon as practicable and in any event within fifteen (15) Business Days after having received the Authority Notice of Change, the Contractor shall deliver to the Authority the Change Proposal. The Change Proposal shall include the opinion of the Contractor on:

- a. whether relief from compliance with obligations is required, including the obligations of the Contractor to achieve any Delivery Date or other date set out in the Contract, and meet the requirements set out in the Schedule of Requirements during the implementation of the Authority Change;
- b. any impact on the fulfilment of the Contractor Deliverables; and
- c. any amendment required to this Contract as a result of the Authority Change.

4. Authority Changes – Process and Implementation

- a. As soon as practicable after the Authority receives the Change Proposal, the Parties shall discuss and agree the issues set out in the Change Proposal.
- b. In such discussions the Authority may modify the Authority Notice of Change and the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such modification, notify the Authority of any consequential changes to the Change Proposal.
- c. As soon as practicable after the contents of the Change Proposal have been agreed or otherwise determined pursuant to Clause A21 (Dispute Resolution), the Authority shall:
 - (1) confirm in writing the Change Proposal (as modified); or
 - (2) withdraw the Authority Notice of Change.
- d. If the Authority does not confirm in writing the Change Proposal (as modified) within thirty (30) Business Days of the contents of the Change Proposal having been agreed in accordance with clause 7 below or determined pursuant to clause 8 below, then the Authority Notice of Change shall be deemed to have been withdrawn.

e. In the event that the Change Proposal has been confirmed by the Authority, then the adjustment to any amount payable by the Authority to the Contractor in respect of any Contractor Deliverables to which the Authority Change relates shall place the Contractor in no better and no worse a financial position than would be the case had the Authority Change not been implemented.

5. Contractor Changes

If the Contractor wishes to introduce a change (a "Contractor Change") to the Contractor Deliverables, it must serve a Notice (a "Contractor Notice of Change") on the Authority.

6. Contractor Changes – Notice of Change

The Contractor Notice of Change must:

- a. set out the proposed Contractor Change in sufficient detail to enable the Authority to evaluate it in full;
- b. specify the Contractor's reasons for proposing the Contractor Change;
- c. request the Authority to consult with the Contractor with a view to deciding whether to agree to the Contractor Change and, if so, what consequential changes the Authority requires as a result;
- d. indicate any implications of the Contractor Change; in particular, whether a variation to the Contract Price by the Authority to the Contractor under this Contract is proposed (and, if so, give a detailed breakdown of such proposed variation); and
- e. indicate if there are any dates by which a decision by the Authority is critical.

7. Contractor Changes – Process and Implementation

a. The Authority shall evaluate the proposed Contractor Change in good faith, taking into account all relevant issues, including whether:

- (1) a variation to the Contract Price payable by the Authority to the Contractor under this Contract will occur;
- (2) the Contractor Change affects the quality of Delivery of the Contractor Deliverables or the likelihood of successful Delivery of the Contractor Deliverables; and
- (3) the Contractor Change will interfere with the relationship of the Authority with third parties.

b. As soon as practicable after receiving the Contractor Notice of Change, the Parties shall discuss the matter referred to in it. During such discussions the Authority may propose modifications or accept or reject the Contractor Notice of Change.

c. If the Authority accepts the Contractor Notice of Change (with or without modification), the relevant change to the Contractor Deliverables shall be implemented within twenty (20) Business Days of the Authority's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall amend this Contract to give effect to the Contractor Change.

d. If the Authority rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.

Unless the Authority's acceptance specifically agrees to a variation to Contract Price by the Authority to the Contractor under this Contract, there shall be no increase in the Contract Price under this Contract as a result of a Contractor Change.

Schedule 5 – Export Licence (i.a.w. clause A.17.g) for Contract No:

Condition to be included in relevant Subcontracts

Export Licence

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

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

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

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

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

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

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

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

- a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:
 - (1) the end user as: Her Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter “HM Government”), and
 - (2) the end use as: For the Purposes of HM Government;

- b. include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the *[insert name of the Contractor]* and the Ministry of Defence of the United Kingdom";
 - c. include in the submission the information that the First Party (and any intermediary parties in the supply chain, as applicable) and the Contractor will be recipients and users of the items, including information, for the performance of the Contract;
6. If the information required under clauses 3 and 4 has been provided previously to the First Party by the Second Party, the Second Party may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 3 and 4.
7. If the Second Party becomes aware of any changes in the information notified previously under clause 3, 4 or 6 that would affect the Contractor's or the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Second Party shall notify the First Party promptly of the change.
8. If the Second Party or any subcontractor in the performance of the Agreement needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Second Party or that subcontractor. The First Party will liaise with its purchaser to enable the Authority to provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regards to any defence or security issue that may arise.
9. Where the Agreement performance requires the export of items for which a foreign export licence is required, the Second Party shall include the dependencies for the export licence application, grant and maintenance in the Agreement risk register and in the risk management plan for the Agreement, with appropriate review points. Where there is no requirement under the Agreement for a risk management plan the Second Party shall submit an Export Licence Plan for agreement with the First Party.
10. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request that is transmitted to the Second Party by the First Party, the Second Party shall, or procure that the Second Party's Subcontractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no such objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority. The First Party shall provide information, certification and other documentation necessary to support the application for the requested variation that it has received. A fair and reasonable charge for this service based on the cost of providing it will be borne by the Authority.
11. Where the Second Party subcontracts work under the Agreement, which is likely to be subject to foreign export control, the Second Party shall use reasonable endeavours to incorporate in each subcontract the same terms as set out in these clauses 1 - 14 . Where it is not practicable to include these said terms, the Second Party shall report that fact and the circumstances to the First Party.
12. Where the First Party provides materiel (information and items, including software) to enable the Second Party to perform the Agreement, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in clause 3 above:
- a. the First Party may, or at the request of the Second Party undertakes to, give the Second Party a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Second Party's ability to perform the Agreement including, to the extent applicable to the Second Party's performance of the Agreement:
 - (1) the exporting nation, including the export licence number (where known);
 - (2) the items or information affected;
 - (3) the nature of the restriction and obligation;
 - (4) the authorised end use and end users;
 - (5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
 - (6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.
 - b. This will not include Intellectual Property-specific restrictions of the type mentioned in

clause D1 (Infringement or Alleged Infringement) in relation to the First Party's Conditions of Contract instead of the Contractor.

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

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

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

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

**Schedule 6 - Hazard Articles, Materials or Substances Supplied under the
Contract: Data Requirements**

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

Contract No:

Contract Title:

Contractor:

Date of Contract:

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

* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:) attached in accordance with Clause B8 of the Standardised Contract 2 Conditions ☐

Contractor's Signature:

Name:

Job Title:

Date:

* check box (☒) as appropriate

To be completed by the Authority

DMC:

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)
Defence Safety and Environment Authority (DSEA)
HQ DE&S
NH3 Cedar 2B, # 3246
MOD Abbey Wood (South)
Bristol, BS34 8JH

**Schedule 7 – Timber and Wood - Derived Products Supplied under the Contract:
Data Requirements**

Contract Num:

**The following information is provided in respect of Clause B9.h (Timber and Wood –
Derived Products):**

Schedule of Requirements item and timber product type	Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence	Volume of timber Delivered to the Authority with other evidence	Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy	Total volume of timber Delivered to the Authority under the Contract

Schedule 8 - Acceptance Procedure (iaw Clause F2) for Contract No:

Schedule 9 Contractor's Commercially Sensitive Information Form

(i.a.w clause A14) for Contract No:

