Schedule D

SUPPLY CHAIN management

1. INTRODUCTION
   1. The purpose of this Schedule is to:
      1. Set out the Supplier’s Supply Chain Management Plan, as agreed at the Commencement Date, at Annex 1;
      2. set out the Supplier’s SME Plan/Charter, as at Annex 2;
      3. provide DEFFORM 139 to be submitted annually as required in accordance with Clause 33, to provide SME expenditure;
      4. list all Sub-contractors as at Commencement Date and as added by Amendment through the life of the Agreement, as at Annex 3;
      5. provide for the eventuality that Step-in rights may be required, in which case the Direct Agreement at Annex 4 shall be required to be signed.

**Annex A – Supplier's Supply Chain Management Plan**

To be added after the Commencement of the Agreement

**Annex B – Supplier's SME Plan/Charter**

To be added after the Commencement of the Agreement

DEFFORM 139

<https://www.kid.mod.uk/maincontent/business/commercial/downloads/defforms/excel/139_0919.xlsx>

A copy of the form is contained on the Defence Sourcing Portal

**Annex C – List of Sub-contractors**

SUB-CONTRACTORS APPOINTED IN ACCORDANCE WITH CLAUSE 31

The contracts listed in the table below constitute Sub-contracts entered into exclusively for the purposes of delivering the Services.

The Supplier shall be entitled to update this Schedule in accordance with Clause 31 (*Appointment of Sub-contractors*).

|  |  |  |  |
| --- | --- | --- | --- |
| **Approved Sub-contractor (name and address, if different from registered office)** | **Registered office address and company number** | **Role in delivery of the Services** | **Small or Medium Enterprise (SME)**  **Y/N** |
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**Annex D – Form of Direct Agreement**

* 1. Direct Agreement

**THIS DEED** is made on 20[ ]

**BETWEEN:**

1. **THE SECRETARY OF STATE FOR DEFENCE** of [xxx] (the “**Authority**”);
2. **[xxx]** a company registered in [Scotland/England and Wales/Northern Ireland] under company number **[xxx]** whose registered office is at [xxx] (the “**Supplier**”)
3. [**SUB**-**CONTRACTOR**], a company incorporated in [Scotland/England and Wales/Northern Ireland] under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] (the "**Sub**-**contractor**").

**WHEREAS:**

1. The Authority and the Supplier have entered into an agreement for [*INSERT DESCRIPTION OF SERVICES*] ("**Main** **Agreement**").
2. The Supplier and the Sub-contractor have entered into a contract (the "**Sub-contract**") whereby the Sub-contractor shall provide [*INSERT DESCRIPTION OF [SERVICES/ ASSETS*]] (the "**[[Services/Assets]]**") in connection with the delivery of the Main Agreement.
3. It is a condition of the Main Agreement that the Authority may require the Sub-contractor to enter this Deed with the Authority and the Supplier as a condition to Authority’s consent to the Supplier and Sub-contractor entering the Sub-contract.

**Now it is agreed** as follows:

1. Warranty and undertaking
   1. The consideration for this Deed is the payment of one pound (£1.00) by each party to every other party if demanded and the mutual undertakings contained in it. In light of such consideration (receipt of which is duly acknowledged by the Sub-contractor), the Sub-contractor warrants and undertakes to the Authority that it has complied and shall continue to comply with all the terms and obligations pursuant to or arising out of the Sub-contract on the Sub-contractor’s part to be performed and observed and shall complete the [Services/Assets] in accordance with the Sub-contract.
2. Step-in Rights: Sub-Contractor may not terminate
   1. The Sub-contractor shall not without first giving the Authority not less than 28 days written notice (a copy of which notice the Sub-contractor shall at the same time send to the Supplier) exercise or seek to exercise any rights it may have to:
      1. terminate the Sub-contract;
      2. treat the Sub-contract as having been terminated by the Supplier;
      3. take possession of any Assets;
      4. prevent the Supplier and/or the Authority from using any Assets in connection with the delivery of the Main Agreement;
      5. discontinue performance of any of the Services; and/or
      6. discontinue performance of any other obligations pursuant to the Sub-contract.
3. Step-in Rights: the Authority may step-in
   1. Without prejudice to Clause 2, if the Authority serves a notice on the Sub-contractor, copied to the Supplier, that:
      1. confirms that the Authority or its appointee or nominee wishes to step-in to the Sub-contract; and
      2. complies with the requirements for the Authority’s notice pursuant to Clause 4.1,

then, from the date of service of the notice, the Sub-contract shall continue in full force and effect, as if it had been entered into between the Sub-contractor and the Authority (or its appointee or nominee), to the exclusion of the Supplier.

* 1. The Sub-contractor shall assume that the Authority (or its appointee or nominee) is entitled to give a notice pursuant to Clause 3.1. The Sub-contractor shall not enquire whether the Authority (or its appointee or nominee) is entitled to give that notice.
  2. In complying with this Clause 3 the Sub-contractor does not waive any breach of the Sub-contract or default pursuant to the Sub-contract by the Supplier.

1. Step-in Rights
   1. The Sub-contractor acknowledges that any of the rights set out in Clause 2.1.1 to Clause 2.1.6, which it may have, shall cease if within the period of 28 days referred to in Clause 2:
      1. The Authority gives the Sub-Contractor written notice requiring the Sub-contractor to fulfil the terms of the Sub-contract as if the Authority (or its appointee or nominee) and not the Supplier were its counterparty pursuant to the Sub-contract;
      2. The Authority (or, to the extent applicable, its appointee or nominee) accepts liability for payment of the sums payable to the Sub-contractor pursuant to the Sub-contract including payment of any sums outstanding at the date of a notice given pursuant to Clause 4.1.1; and
      3. The Authority (or, to the extent applicable, its appointee or nominee) acknowledges in such notice that it is assuming all of the obligations of the Supplier pursuant to the Sub-contract, including payment of any amounts outstanding at the date of the notice or which may subsequently become due pursuant to the Sub-contract.
   2. Neither the Authority nor any appointee or nominee shall have any liability to the Sub-contractor in respect of the fees and expenses of the Sub-contractor other than where it accepts liability pursuant to Clause 4.1.
   3. In the event of notice being given by the Authority pursuant to Clause 4.1.1, the Sub-contract will continue in full force and effect as if no right to terminate the Sub-contract or treat it as terminated had arisen. The Sub-contractor shall, where the Authority has given notice pursuant to Clause 4.1.1, assume liability to the Authority (or, to the extent applicable, its appointee or nominee) in terms of the Sub-contract in lieu of the liability to the Supplier and the Sub-contractor undertakes to send, upon the Sub-contractor's receipt thereof, a copy of such notice to the Supplier.
   4. The Sub-Contractor shall, if so required by the Authority following termination of the Sub-contract, contract direct with the Authority or its appointees or nominees by novation or otherwise on the same terms, mutatis mutandis, as are contained in the Sub-contract provided that: the Authority gives the Sub-Contractor written notice requiring the Sub-Contractor to do so within a period of 28 days from the date of termination of the Sub-contract.
   5. The Supplier acknowledges that the Sub-contractor in acting in accordance with Clauses 2, 3 and 4 shall not by doing so incur any liability to the Supplier.
2. Assignment
   1. This Deed may be assigned in whole or in part by the Authority without the consent of the Sub-contractor being required and such assignment shall be effective upon written notice thereof being given to the Sub-contractor. No assignment of this Deed by any other party shall be permitted.
   2. The Sub-contractor agrees that it shall not at any time assert that any permitted assignee in terms of this Deed is precluded from recovering any loss resulting from any breach of this Deed by reason that such assignee is not an original party to this Deed or that no less or a different loss has been suffered by such assignee.
3. No waiver or variation
   1. No failure, approval, act or forbearance on the part of the Authority in respect of any right of the Authority pursuant to this Deed shall constitute any waiver of any right of the Authority pursuant to or arising out of this Deed nor relieve the Sub-contractor of any of its duties or obligations pursuant to or arising out of this Deed.
   2. The Sub-contractor shall not seek to modify or vary any of the obligations for which it is responsible pursuant to the Sub-contract in any respect if that modification or variation will be detrimental to the Authority or affects the Authority's rights or obligations pursuant to the Main Agreement or this Deed.
4. Equivalent rights

The liability of the Sub-contractor pursuant to this Deed shall be no greater in extent or quantity than if the Authority had been named as a party instead of the Supplier pursuant to the Sub-contract. The Sub-contractor shall be entitled in any action or proceedings by the Authority (or, to the extent applicable, its appointee or nominee) to rely on any limitation in the Sub-contract and to raise the equivalent rights in defence of liability as it would have against the Supplier pursuant to the Sub-contract (other than counterclaim, set-off or to state a defence of no loss or a different loss has been suffered by the Supplier).

1. Notices
   1. Any notice, consent or demand to be given or made by any party pursuant to this Deed (hereinafter called a "**Notice**") shall only be validly served if in writing and delivered personally or sent by pre-paid first class recorded delivery post to the following address and marked for the attention of the following person in the case of each party:

|  |  |  |
| --- | --- | --- |
| **Party** | **Address** | **Person** |
| The Authority | [●] | [●] |
| The Supplier | [●] | [●] |
| The Sub-contractor | [●] | [●] |

Any party may by Notice to the other party/parties change its addressor the title of the person for whose attention Notices are to be given or made pursuant to this Clause 8. Any such Notice shall be deemed to have been received:

* + 1. if delivered personally, at the time of delivery; and
    2. in the case of pre-paid first class recorded delivery post, on the first Business Day after the date of posting.
  1. If any Notice is delivered after 5 p.m. on a Business Day, or at any time during a day which is not a Business Day, that Notice shall be deemed to have been received at 9 a.m. on the next Business Day.
  2. For the purposes of this Clause 8, "**Business Day**" means any day which is not a Saturday, a Sunday or a public holiday in England. In proving service it shall be sufficient to prove that the envelope containing such Notice was properly addressed to the relevant party and either delivered personally to that address or delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter. Notices shall not be validly served if sent by e-mail.
  3. The definitions of words and phrases used in this Deed shall be those set out in the Sub-contract except where expressly defined in this Deed.
  4. A reference in this Deed to any Clause is, except where it is expressly stated to the contrary, a reference to a Clause of this Deed.
  5. This Deed shall be governed by and construed in accordance with English Law and the parties hereto submit to the exclusive jurisdiction of the English Courts.
  6. Save to the extent expressly provided in this Deed no provision of this Deed is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party. No term of this Deed is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

|  |  |  |
| --- | --- | --- |
| [**Executed** and **Delivered** as a **Deed**  for and on behalf of **THE AUTHORITY** acting on behalf of the Secretary of State for Transport | )  )  ) |  |
|  |  | Signature |
|  |  |  |
|  |  | Name] |

|  |  |  |
| --- | --- | --- |
| **Executed** and **Delivered** as a **Deed** by **[SUPPLIER]** acting by**:** | )  )  ) |  |
|  |  | Director [or specify other office held] |
|  |  |  |
|  |  | Director /Secretary |

|  |  |  |
| --- | --- | --- |
| **Executed** and **Delivered** as a **Deed** by **[SUB-Contractor]** acting by**:** | )  )  ) |  |
|  |  | Director [or specify other office held] |
|  |  |  |
|  |  | Director /Secretary |