

[REDACTED]

"Term" means the period commencing on the Contract Effective Date and ending on the Expiry Date or on earlier termination of this Contract.

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

Unlimited liabilities

69.2. Neither Party limits its liability for:

- 69.2.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 69.2.2. fraud or fraudulent misrepresentation by it or its employees;
- 69.2.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 69.2.4. any liability to the extent it cannot be limited or excluded by law.

69.3. The financial caps on liability set out in Clauses 69.4 and 69.5 below shall not apply to the following:

- 69.3.1. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:
 - 69.3.1.1. the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
 - 69.3.1.2. the Contractor's indemnity in relation to TUPE at Condition 54 (Transfer Regulations (Transfer Undertaking (Protection of Employment)));
- 69.3.2. for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
 - 69.3.2.1. the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts);
 - 69.3.2.2. the Authority's indemnity in relation to TUPE under at Condition 54 (Transfer Regulations (Transfer Undertaking (Protection of Employment)));
- 69.3.3. breach by the Contractor of DEFCON 532A and Data Protection Legislation; and
- 69.3.4. to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
- 69.3.5. For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 69.4 and/or 69.5 below.

Financial limits

69.4. Subject to Clauses 69.2 and 69.3 and to the maximum extent permitted by Law:

- [REDACTED]
- 69.4.1. throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
- 69.4.1.1. in respect of DEFCON 76 £ pounds (£11,000,000) in aggregate;
- 69.4.1.2. in respect of Condition 17 £ pounds (£1,250,000) in aggregate;
- 69.4.1.3. in respect of DEFCON 611 £ pounds (£11,000,000) in aggregate; and
- 69.4.1.4. in respect of DEFCON 612 £ pounds (£11,000,000) in aggregate;
- 69.4.2. without limiting Clause 69.4.1 and subject always to Clauses 69.2, 69.3 and 69.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with Condition 72 (Service Credits and Incentive Adjustments), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £ pounds (£0) in aggregate;
- 69.4.3. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 69.4.1 and 69.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 69.4.1 and 69.4.2 of this Contract.
- 69.5. Subject to Clauses 69.2, 69.3 and 69.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 69.6. Clause 69.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

- 69.7. Subject to Clauses 69.2, 69.3 and 69.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
- 69.7.1. indirect loss or damage;
- 69.7.2. special loss or damage;
- 69.7.3. consequential loss or damage;
- 69.7.4. loss of profits (whether direct or indirect);
- 69.7.5. loss of turnover (whether direct or indirect);
- 69.7.6. loss of business opportunities (whether direct or indirect); or
- 69.7.7. damage to goodwill (whether direct or indirect), even if that Party was aware of the possibility of such loss or damage to the other Party.
- 69.8. The provisions of Clause 69.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

- [REDACTED]
- 69.8.1. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - 69.8.1.1. to any third party;
 - 69.8.1.2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - 69.8.1.3. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 69.8.2. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
 - 69.8.3. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, reprocurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
 - 69.8.4. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
 - 69.8.5. damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;
 - 69.8.6. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
 - 69.8.7. any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
 - 69.8.8. any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

- 69.9. If any limitation or provision contained or expressly referred to in this Condition **Error! Reference source not found.** is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition **Error! Reference source not found.**

Third party claims or losses

- 69.10. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

- [REDACTED]
- 69.10.1. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - 69.10.2. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

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

70. Guaranteed Minimum Throughput excluding delivery of spares

- 70.1. The Authority will guarantee an overall minimum throughput of £375,000 (VAT ex) for each Financial Year in total, as detailed in Clause 6.2 above, to undertake activities in Schedule 2 (Statement of Technical Requirements) and Schedule 2A (Statement of Technical Requirements – Pricing – 11m Standard Work Boat (SWB)) and Schedule 2B (Statement of Technical Requirements – Pricing – 11m Small Survey Boat (SSB)) and Schedule 2C (Statement of Technical Requirements – Pricing – 15m Route Survey Boat (RSB)) and Schedule 2D (Statement of Technical Requirements – Pricing – 15m Officer Training Boat (OTB)) and Schedule 2E (Statement of Technical Requirements – Pricing – 15m Dive Support Boat (DSB)) and Schedule 2F (Statement of Technical Requirements – Pricing – 15m Survey Motor Boat (SMB)) and Schedule 2G (Statement of Technical Requirements – Pricing – 13.8m Passenger Transfer Boat (PTB)) and Schedule 2H (Statement of Technical Requirements – Pricing – HMS MAGPIE).
- 70.2. Within twenty (20) Business Days of the end of each Financial Year, the Contractor shall submit a Contract Costs Statement Declaration, attached at Schedule 18 (Contract Costs Statement Declaration Form) with a completed Schedule 6 (Information Reporting), for each Financial Year detailing:
 - 70.2.1. all MOD Boat Forms and Work Requests Forms that have been approved and paid; and
 - 70.2.2. all MOD Boat Forms and Work Request Forms that have been approved before 31 March for each Financial Year and payment has not yet been paid;
 - 70.2.3. all MOD Boat Forms and Work Request Forms that have not been approved before 31 March for each Financial Year and payment has not yet been paid;
- 70.3. The Authority will undertake a reconciliation of these payments on CP&F and a payment up to the guaranteed value will be made via CP&F, where the value of work contractually committed between 1st April and 31st March each Financial Year falls below that threshold.

71. Security Access Requirement

- 71.1. The Contractor shall ensure that all employees (including sub-contractors) that may be required to attend MOD sites (including but not limited to: Britannia Royal Naval College, Horsea Island, HMNB Clyde, HMNB Devonport, HMNB Gibraltar, HMNB Portsmouth, HMS Excellent and HMS Raleigh) must have the required personnel security and vetting in