

Contract No: 703821450-BOATS/0009

**For: Improvement Contract for Training Vessel
(TV) Tristram**

Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland Team Name and address: DE&S Ships Boats Ash 2a, #3203, Ministry of Defence Abbey Wood South, Bristol, BS34 8JH E-mail Address: [REDACTED] Telephone Number: [REDACTED] Facsimile Number: N/A	And Contractor Name and address: E-mail Address: Telephone Number: Facsimile Number:
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- Schedule 1 – Definitions of Contract
- Schedule 2 – Schedule of Requirements
- Schedule 3 – Contract Data Sheet
- Schedule 4 – Contract Change Control Procedure
- Schedule 5 – Contractors Commercially Sensitive Information

Schedule 6 - Hazardous Contractor Deliverables, Material or Substance Supplied under the Contract
Schedule 7 - Timber and Wood -Derived Products Supplied under the Contract
Schedule 8 – Acceptance
Schedule 9 – Key Performance Indicators
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Schedule 11 – Integrated Project Management Plan
Schedule 12 – Care and Custody and Acceptance form (MOD Boats Form TV Tristram)
Schedule 13a to 13c -Social Values

General Conditions

1.General

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

2.Duration of Contract

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

with the provisions of the Contract, or otherwise lawfully terminated.

3. Entire Agreement

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

4. Governing Law

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
 - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
 - "a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
 - b. Subject to Condition 39 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
 - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
 - (2) Clause 39.b shall be amended to read:

"In the event that the dispute or claim is not resolved pursuant to clause 39.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 39.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010."
- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably

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

5. Precedence

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

- (1) Conditions 1 - 43 (and 44 - 46, if included in the Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
- (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 40 (Dispute Resolution).

6. Formal Amendments to the Contract

a. Except as provided in Condition 30 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:

- (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used); and
- (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.

b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.

c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:

- (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127. Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643 (SC2); or
- (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

Changes to the Specification

d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.

- e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

7. Authority Representatives

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

shall be deemed to be references to the Authority's Representatives in accordance with this Condition 7.

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

- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with Condition 6 (Formal Amendments to the Contract).

8. Severability

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

9. Waiver

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

10. Assignment of Contract

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

11. Third Party Rights

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