



DSA

DSACOMDD/5037

Enabling Contract for the Provision of a Complete Disposal Service for Surplus Equipment, Spares & Materiel for Military Platforms

Issued By:

Disposal Services Authority
Room 7, Building H9, H Site
Ploughley Road

Arcott

BICESTER

Oxon OX25 2LD

THIS CONTRACT is made on the **28th April 2015** between **Military Spares UK Limited**, A1 Hovefields Avenue, Basildon, Essex, SS13 1EB and the **SECRETARY OF STATE FOR DEFENCE** of her Britannic Majesty's Government of Great Britain and Northern Ireland of Whitehall, London, as represented by the Disposal Services Authority of the Defence Equipment and Support organisation of the Ministry of Defence, at Building H9, H Site, Ploughley Road, Arncott, Bicester OXON OX25 2LD.

WHEREAS

- A) The Contractor will collect and store surplus military spares and materiel for military platforms, collectively known as Residual Assets, as defined in, but not limited to, the list at Annex E, declared surplus to MoD requirements, and market them in such a manner as to obtain the best financial return to MoD, and in accordance with the terms of the Contract.
- B) The Authority is required to maximise the return to the Defence Vote through the disposal of the Residual Assets, but is unable to store, or carry out any repair or refurbishment, or to give any warranty to the Contractor or to any Customer.
- C) The Authority has selected the Contractor to collect, store, market and sell Residual Assets as defined at Annex E.
- D) The Contractor shall provide an IT based system to account for Residual Assets from receipt to final disposal, and to facilitate re-utilisation and sale.

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OFFICIAL SENSITIVE COMMERCIAL

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Ministry of Defence

CONTRACT NUMBER DSACOMDD/5037 - ENABLING CONTRACT FOR THE PROVISION OF A COMPLETE DISPOSAL SERVICE FOR SURPLUS EQUIPMENT, SPARES AND MATERIEL FOR MILITARY PLATFORMS

1 Nature of Enabling Contract

The Enabling Contract, against which Demanding Authorities raise Tasking Orders comprises

- a. The provisions of the Enabling Contract (Schedule 1)
- b. The Schedule of Requirements (Schedule 2 - DEFCON110)
- c. The Terms and Conditions (Schedule 3) - prepared for the purpose of but not of themselves comprising a Contract.

Subject to Paragraphs 2 to 7 of herein the receipt of any Tasking Order will create a legally binding Contract relating only to the quantities and / or the requirement stipulated in the particular Tasking Order and shall be subject to the Terms and Conditions of Contract as detailed in Schedule 3.

2. Period Of Enabling Contract

The Enabling Contract shall cover all Tasked Orders issued by the Authorised Demander(s) detailed at Paragraph 6 below from the 1st May 2015 for a period of 4 years until the 30th April 2019. The Contract offer is to remain open for the Authority's acceptance for a further 3 Option Years. After the expiry of this period, no new contracts relating to this Enabling Contract will be issued.

3. Volume

The Authority makes no guarantees on the volume or quality of the surplus equipment and shall not be bound to declare any of the items referred to in the Schedule of Requirements.

4. Ordering Procedure

A written tasking order shall be issued for each declaration of Residual Assets referred to in the Schedule of Requirements (Schedule 2, DEFCON 110). A signed Tasking Order is the Contractor's only authority to proceed with the requirements contained therein.

5. Price

The percentage of the Net Selling Price of each Residual Asset sold, stated in Schedule 2 shall be firm (i.e. not subject to variation) for the whole period of the Enabling Contract as shown at Paragraph 1 above.

6. Alternative Quotations

The Contractor acknowledges that the Authority reserves the right to invite competitive quotations and/or place orders elsewhere for any or all of the items listed in the schedule of requirements during the period of the Contractors offer.

7. Authorised Demanders

Individual Tasking Orders shall be issued by letter by the following Authorised Demander(s):

Commercial Disposals 2 (CD2)
Disposal Services Authority
DE&S Arncott
Building H9, H Site
Ploughley Road
Arncott, BICESTER
Oxon, OX25 2LD
Tel: 01869 258617
Email: desdsa-decs@mod.uk

The undersigned having read the above hereby accepts the Provisions of the Enabling Contract.

Dated ...

Signature.....in the capacity of:.....

Name (in Block Capitals).....

Signature.....in the capacity of:.....

Name (in Block Capitals).....

Duly authorised to sign for and on behalf of:

Company's Name:.....

Postal Address:

.....

.....

.....

Tel No:

Email Address:.....

CONTRACTS – IN - CONFIDENCEDEFCON 110
(Edn 4/88)

Military Spares UK Limited
A1 Hovefields Avenue
Basildon
Essex
SS13 1EB

MINISTRY OF DEFENCE**Schedule of Requirement For**

The Provision of a Complete
 Disposal Service for Surplus
 Equipment, Spares and
 Materiel from Military Platforms

**SCHEDULE 2 to
DSACOMDD/5037****Issued with:** ContractOn: 28th April 2015**Table I Services Required**

Item No	Description	Percentage of Net Selling Price payable to MOD
1	<p>The Contractor shall operate a complete disposal service for the disposal of surplus equipment, of spares & materiel for military platforms in accordance with the Contract terms and conditions contained in Schedule 3 to DSACOMDD/5037</p> <p>The disposal service shall include but not limited to:</p> <p>COLLECTION: The DSA shall task the Contractor by issue of a written tasking (Declaration) notice, usually by e-mail, for each separate disposal requirement. This will provide the Contractor with written details of such Residual Assets, including identification, quantities, location and, where practicable, the serviceable or un-serviceable condition of the Residual Assets. The Authority shall use reasonable endeavours to ensure the accuracy of such details.</p> <p>NOTE: The Authority will not segregate materiel from different environments i.e. Air, Land or Sea materiel</p> <p>ACCOUNTING: The Contractor shall perform a receipt check against all Residual Assets collected and received against all tasks placed by the Authority. All Residual Assets shall be accounted by NATO Stock Number, where provided, for the purposes of stock record and sales.</p> <p>STORAGE: All Residual Assets should be stored securely and in such a condition as not to affect their material value.</p> <p>MARKETING: The Contractor shall be responsible for the marketing of the Residual Assets to achieve the maximum return.</p> <p>SALES: The Contractor shall undertake sales as principal and not as the Authority's agent.</p>	

CONTRACTS – IN - CONFIDENCEDEFCON 110
(Edn 4/88)

Military Spares UK Limited
A1 Hovefields Avenue
Basildon
Essex
SS13 1EB

MINISTRY OF DEFENCE**Schedule of Requirement For**

The Provision of a Complete
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**SCHEDULE 2 to
DSACOMDD/5037****Issued with:** ContractOn: 28th April 2015**Table I Services Required**

2	A list of the types assets covered by the Contract is attached at Annex E to Schedule 3 to DSACOMDD/5037	
3	Provision and Maintenance of an IT based Residual Assets Inventory System in the form of an item-based accounting system for all assets (including any supporting information and software) transferred under the contract. The system will be subject to the approval of, and subsequent audit by, the Defence Internal Audit, Asset Accounting Centre (DIA AAC)	
4	Provision of monthly reports in accordance with Annex H	
5	Attendance at Progress Meetings as required.	
6	The Contractor shall possess all appropriate licences and comply with Health and Safety/Hazardous Waste Regulations and WEEE Legislation where appropriate to enable authorisation to dispose of all waste emanating from the Contract.	
7	Percentage of Net Selling Price of Residual Assets sold to be returned to the Authority.	
8	<p>Aerospace and Land Systems</p> <p>Naval Systems</p> <p>Service Credits to paid in the event of KPI or PI failure</p>	<p>■</p> <p>■</p> <p>■ (see condition 10.10)</p>

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREIN CONTAINED,
THE PARTIES DO HEREBY AGREE AS FOLLOWS:

CONDITIONS OF CONTRACT

1. DEFCONs Applicable to the Contract

The following General Conditions of Government Contracts shall apply:

- | | | |
|------------------------|---|---|
| DEFCON 76 (Edn 12/06) | - | Contractor's Personnel at Government Establishments
Note:
i). For the purposes of the Contract, Clauses 11, 12 and 15 of this DEFCON shall not apply.
ii). Refer to Contract Condition 14. |
| DEFCON 501 (Edn 06/14) | - | Definitions and Interpretations
Note:
i) For the purposes of the Contract, Clauses 2a and 2b of this DEFCON shall not apply.
ii) Refer to Contract Condition 2 - Definitions |
| DEFCON 502(Edn 06/14) | - | Specifications Changes |
| DEFCON 503 (Edn 06/14) | - | Formal Amendments to Contract |
| DEFCON 509 (Edn 09/97) | - | Recovery of Sums Due |
| DEFCON 513 (Edn 06/10) | - | Value Added Tax |
| DEFCON 515 (Edn 10/04) | - | Bankruptcy and Insolvency |
| DEFCON 516 (Edn 04/12) | - | Equality |
| DEFCON 518 (Edn 11/12) | - | Transfer |
| DEFCON 520 (Edn 07/11) | - | Corrupt Gifts and Payments of Commission |
| DEFCON 521 (Edn 04/12) | - | Subcontracting To Supported Businesses |
| DEFCON 522 (Edn 07/99) | - | Payment |
| DEFCON 523 (Edn 03/99) | - | Payment of Bills Using the Bankers Automated Clearing Service (BACS) System |
| DEFCON 526 (Edn 08/02) | - | Notices |
| DEFCON 527 (Edn 09/97) | - | Waiver |
| DEFCON 528 (Edn 05/12) | - | Overseas Expenditure and Import Licences |

DEFCON 529 (Edn 09/97)	-	Law (English)
DEFCON 530 (Edn 07/04)	-	Dispute Resolution (English Law) Note: Refer to Contract Condition 16
DEFCON 531 (Edn 05/05)	-	Disclosure of Information
DEFCON 534 (Edn 06/97)	-	Prompt Payment (Subcontracts)
DEFCON 537 (Edn 06/02)	-	Rights of Third Parties
DEFCON 538 (Edn 06/02)	-	Severability
DEFCON 539 (Edn 08/13)	-	Transparency
DEFCON 566 (Edn 07/14)	-	Change Of Control of Contractor
DEFCON 604 (Edn 06/14)	-	Progress Reports
DEFCON 606 (Edn 06/14)	-	Change and Configuration Control Procedure
DEFCON 608 (Edn 10/98)	-	Access and Facilities to be provided by the Contractor
DEFCON 609 (Edn 06/14)	-	Contractor's Records
DEFCON 610A (Edn 12/02)	-	Enabling Contracts – Duration Period (Tasking Contracts)
DEFCON 611 (Edn 06/06)	-	Issued Property
DEFCON 614 (Edn 09/03)	-	Default
DEFCON 615A (Edn 03/04)	-	Orders For Articles/Services under Enabling Contracts
DEFCON 616 (Edn10/98)	-	Competition/Alternative Sourcing
DEFCON 618 (Edn 12/02)	-	Enabling Contracts – Standing Offer
DEFCON 632 (Edn 08/12)	-	Third Party Intellectual Property Rights Restrictions
DEFCON 642 (Edn 06/14)	-	Progress Meetings Note: For the purposes of the Contract, the party responsible for taking the minutes (Clause 3) shall be the Authority.

GENERAL CONDITIONS**2. DEFINITIONS**

Applicable DEFCON:

DEFCON 501 – Definitions and Interpretations

As used in the Contract, in addition to DEFCON 501, the following words and phrases shall have the meanings ascribed to them:

- 2.1. "Party" means either the Contractor or the Authority; "Parties" means both the Contractor and the Authority.
- 2.2. "Residual Assets" means any equipment declared surplus by the Authority, which may include, but not be limited to, those identified at Annex E.
- 2.3. "Customer" - A third party purchaser or potential purchaser of Residual Assets from the Contractor.
- 2.4. "Effective Date" – last date of contract signature.
- 2.5. "Gross Selling Price" shall mean the gross amount invoiced to the Customer by the Contractor exclusive of VAT.
- 2.6. "Net Selling Price" shall mean the Gross Selling Price less allowable deductions permitted under Condition 10.8 of the contract.
- 2.7. "Day" shall mean business or working day.
- 2.8. "Task" shall mean a firm instruction placed on the Contractor by the Authority, which requires the Contractor to collect and dispose of Residual Assets in accordance with the provisions of the contract.

3. SCOPE OF CONTRACT

Applicable DEFCONs:

DEFCON 502 – Specifications Changes

DEFCON 503 – Formal Amendments to Contract

DEFCON 606 – Change and Configuration Control Procedure

3.1. The Contractor shall undertake to provide a complete Disposal Service for Surplus Equipment Spares and Materiel for Military Platforms, as detailed at Annex E. The Contractor shall collect, account for, store, market and sell the Residual Assets for further use or, in the case of un-saleable items, remove from site for recycling, at market prices, to the mutual benefit of the Authority and the Contractor. The Contractor shall use all reasonable endeavours to obtain the best prices available in prevailing market conditions at the time that Residual Assets are sold. Where the Contractor has acquired, or has the opportunity to acquire, Residual Assets under the contract, they shall market and sell those Residual Assets in preference to any similar equipment acquired from other sources.

3.2. Except as provided at Conditions 3.4 and 3.6, the Contractor has no right of exclusivity to receive and dispose of any Residual Assets on behalf of the Authority. The Authority may, occasionally, decide to market and sell Residual Assets by means other than those covered under the terms and conditions of the Contract. Such instances may include, but shall not be limited to, Government-to-Government sales, and

sales to other agencies or bodies the Authority may deem it necessary to deal with directly. The Authority's decision in these cases shall be final.

3.3. At no time during the term of the Contract can a guarantee be given regarding specific volumes of Residual Assets (if any) that may be declared, and the Authority does not bind itself to demand any specific quantity of work from the Contractor.

3.4. When the Authority has identified Residual Assets and tasked the Contractor in accordance with Condition 4.1, the Authority shall subsequently refrain from offering those Residual Assets to any other contractor, unless the Contractor fails to fulfil their obligations under the Contract.

3.5. Whilst the Authority will provide Residual Asset information it may be necessary that certain information will require connection to MoD IT systems/databases. Should such a connection be available to contractors, any associated costs shall be at the Contractor's expense and all system operating procedures must be adhered to.

3.6.. Where the Contractor, through any relationships created with other organisations through the Contract, directly identifies Residual Assets for disposal they shall refer the requirement to the Authority who shall then give the Contractor exclusive rights for the disposal of those Residual Assets under the terms of the Contract.

3.7 Notwithstanding Residual Assets declared to the Contractor, the Contract specifically excludes the following range of items and equipment. In the event that such items are received, the Contractor shall immediately report the receipt to the Authority in accordance with the procedures detailed at Annex F. Arrangements for collection of such items shall be made in accordance with Annex F:

Explosives (or material which contains explosives/explosive devices) except by prior mutual agreement

Hazardous Goods outside of the scope of the requirement, except by prior mutual agreement

Accommodation/Kitchen stores

Clothing & Textiles

Furniture

Food/Rations

Scrap metal

Aircraft/Ships/Vehicles

Category A, B & C general Vehicle spares

IT Equipment outside of the scope of the contract

Medical & Dental equipment

Pharmaceuticals

3.8. The Authority may identify surplus equipment not covered by the list at Annex E and may at its discretion request the Contractor to dispose of that equipment in accordance with the Contract. The

Contractor's agreement to dispose of such equipment shall not be unreasonably withheld. Such requests shall not in any way imply that the Authority is bound to dispose of that or like equipment in such a way in the future.

3.9. The Authority reserves the right to require the Contractor to collect surplus Residual Assets from any Establishment, Unit, or other defence contractor premises within the specified region of the United Kingdom and Germany, there may also be occasion when a worldwide disposal service is required, but would be considered and agreed on a case by case basis.

4. UNDERTAKINGS BY THE AUTHORITY

4.1. Whenever the Authority identifies any Residual Assets as surplus to its requirements and which it proposes to dispose of via the Contract, the Authority shall, without charge to the Contractor:

4.1.1. Provide the Contractor with written details of such Residual Assets reasonably and readily available to the Authority, including identification, quantities, location and, where practicable, the serviceable or un-serviceable condition of the Residual Assets. The Authority shall use reasonable endeavours to ensure the accuracy of such details;

4.1.2. Request that the Contractor undertakes an on site inspection visit within 5 days of receiving such a request, in order to estimate the disposal media and manpower required to effect clearance of the Residual Assets. The Authority reserves the right to request such inspection visits but will not exercise that right unreasonably;

4.1.3. Make available and allow access to such Residual Assets at times agreed between the Parties, in accordance with the Working Procedures at Annex C.

4.2. The Authority shall be entitled, at any time prior to sale, to inspect any Residual Assets being worked on or stored by the Contractor, although no such inspection or lack of inspection shall affect any of the Contractor's obligations under the Contract.

4.3. The Authority shall monitor the Contractor's performance of the Contract against the Levels of Performance set out at Annex D.

5. RESPONSIBILITIES OF THE CONTRACTOR

Applicable DEFCONs:

DEFCON 605 – Financial Reports

DEFCON 608 – Access and Facilities to be provided by the Contractor

DEFCON 609 – Contractor's Records

5.1. The Contractor shall undertake all work under the contract in accordance with the Working Procedures at Annex C and the Key Performance Indicators at Annex D.

5.2. In addition to the Working Procedures at Annex C, the Contractor shall:

5.2.1. recognise that there may be occasions when the Authority is required to recall equipment for further use, but shall understand that such occasions will be kept to a minimum. In such cases, the Authority will contact the Contractor to arrange for the equipment to be returned, at the Authority's cost, subject to the Authority's prior approval of such costs in accordance with Condition 10.3. The Contractor shall use all reasonable endeavours to minimise costs in this respect.

5.2.2 comply with any restrictions imposed by the Authority on the sale of Residual Assets. In the event that the Authority advises restrictions on the sale of certain items transferred to the Contractor, the Contractor shall be entitled to a reimbursement of costs, subject to the Authority's prior of such costs in accordance with Condition 10.3.

5.2.3. at their own expense, put in place formal procedures governing the handling and sale of waste arising from the Contract. This will include registering with the Environmental Agency as a Hazardous Waste Producer;

5.2.4. wherever possible, generate cash receipts for any materiel recycled under the Contract. Such receipts shall be shared between the Contractor and the Authority at the agreed share ratios. Where recycling results in no cash receipt being generated, the entire costs associated with the recycling of the item(s) shall be borne by the Contractor. The Contractor shall ensure that the recycling of all items is conducted in accordance with all current relevant Government legislation and any additional legislation introduced during the term of the Contract, and shall demilitarise and mutilate all scrap to prevent further use;

5.3. The Contractor, or their Customer if appropriate, shall be responsible for obtaining any necessary clearance or export licence(s) and meeting any legal requirements covering the sale of Residual Assets overseas. The Contractor shall not export, nor attempt to export, any of the Residual Assets until title to those Residual Assets has passed to it in accordance with Condition 7.

5.4. All UK and European legislation relating to health and safety, product liability, the handling and storage of chemicals and other dangerous goods and substances, and the production, keeping, treatment or disposal of waste, shall be met by the Contractor. All Residual Assets shall be safely and securely stored and handled whilst in the Contractor's possession or control. The Contractor shall observe all national transport and storage requirements and any particular requirements imposed by the Authority in any specific case.

5.5. As far as is reasonably practicable the Contractor shall ensure that the provisions in Conditions 5.3 and 5.4 above are included in any sub-contracts placed in order to fulfill the obligations of the Contract. The Authority's access to sub-contractors shall be arranged through the Contractor.

5.6. When requested by the Authority, the Contractor shall provide such information and documentation as may reasonably be required and permit the Authority to audit the Contractor's records as may reasonably be required, to satisfy itself that the Contractor is fulfilling their obligations under Condition 5.5 above, provided that neither the provision of such information or documentation nor the carrying out of any such audit shall in any way exclude or limit the Contractor's obligations elsewhere.

5.7. The Contractor shall ensure that any sub-contractor it engages in the performance of the Contract is made aware of, and abides by, the terms and conditions of the Contract.

5.8. The Contractor shall accept liability of, and risk in, the assets from the point of collection from site. In any event the risk associated with stock losses or damage to the assets remains with the Contractor who, without prejudice to any other rights or remedies of the Authority, shall make good such loss or damage however caused.

5.8.1 The liability for stock losses shall be set at 1% for A1 stock and 0.25% for EO stock; or the Minimum Guaranteed Price or Minimum Selling Price, for items where such a price has been set.

6. WORKING PROCEDURES

6.1. The working procedures to be followed by the Authority and the Contractor shall be those at Annex C to the Contract. Any changes to the working procedures shall be agreed by the Parties and reflected in a formal amendment to the Contract. In the event of any conflict between the terms and conditions of this Agreement and Annex C, the former shall prevail.

7. TITLE TO RESIDUAL ASSETS

7.1. Property in the Residual Assets (or any part of thereof) shall only pass from the Authority to the Contractor when the Contractor enters into a binding agreement to sell the Residual Assets (or any part of thereof) to a Customer. Once the Contractor and Customer have entered into such an agreement, title of those Residual Assets (or any part of thereof), shall pass to the Contractor. Entry into a sales agreement that is subject to the grant of an export licence (or any other legally required formality prior to export), but which is otherwise binding upon the Contractor and their Customer, shall be considered a binding agreement upon which title in the Residual Assets shall pass to the Contractor.

7.2. Until property in the Residual Assets passes to the Contractor in accordance with Condition 7.1, the Contractor shall hold the Residual Assets on a fiduciary basis as bailee for the Authority. Notwithstanding that the Residual Assets (or any part of thereof) remain the property of the Authority; the Contractor shall repair, refurbish, maintain and sell the Residual Assets (or any part of thereof) in accordance with the provisions of the Contract.

7.3. Whenever the Contractor sells to a Customer, it does so as principal and not as the Authority's agent, and has no authority to commit the Authority to any liability or contract.

7.4. Neither the Contractor, nor any sub-Contractor, nor any other person, shall have a lien on Issued Property in respect of any sum due to neither the Contractor, nor any sub-Contractor nor any other person. The Contractor shall take all steps necessary to ensure that the title of the Authority is brought to the notice of all sub-Contractors and other persons dealing with any Issued Property.

7.5. The Contractor shall not normally be permitted to purchase any surplus Residual Assets on its own behalf. In exceptional circumstances, the Authority will consider written proposals from the Contractor to make such a purchase, and the Authority's decision shall be final.

7.6. Until a sale has been agreed with a customer, the Contractor shall not remove or deface any label or plaque identifying the Residual Assets as the property of the Authority. However, price labels shall be removed or rendered wholly illegible prior to sale.

8. WARRANTY

8.1 The Authority, on transfer of title, warrants that the said transfer of Residual Assets will be free from any impediment. It shall be for the Contractor to satisfy itself that a Residual Asset is suitable and fit for the purpose for which it is being sold to the Customer, in accordance with current UK and EU legislation. Any warranty associated with the refurbishment of Residual Assets shall be provided by the Contractor.

8.2. The Contractor shall warrant for itself and its sub-Contractors that it and they are fully competent to handle, store and sell the Residual Assets and to keep, test and dispose of all waste produced by it or them in the performance of the contract. Furthermore the Contractor shall indemnify, and keep the Authority indemnified, against any failure by it or its sub-Contractors to carry out its and their obligations.

9. EFFECTIVE DATE, DURATION OPTION YEARS AND TERMINATION

Applicable DEFCONs:

DEFCON 515 – Bankruptcy and Insolvency

DEFCON 614 – Default

DEFCON 610A – Enabling Contracts – Duration Period (Tasking Contracts)

DEFCON 625 – Co-operation on Expiry of Contract

9.1. The period of Contract shall be for a period of four years from 1st May 2015. The Contractor shall keep his offer open for the Authority's acceptance for an additional 3 one year periods. The Authority will notify the Contractor in writing 6 months before the expiry of the Contract whether each Option Year will be taken up. The Option Years do not imply or commit the Authority to extending the Contract beyond its initial 4 year period.

9.2. If the Contractor fails to make payment of any sum due to the Authority (whether under this or any other Contract with the Authority), or ceases or formally notifies the Authority of its intention to cease business, or is otherwise in breach of the Contract, or if the Contract becomes liable to be terminated, the Authority shall be entitled at any time, and with reasonable notice to the Contractor, to enter any premises where it believes Residual Assets may be held and to remove such assets from such premises. Nothing in this condition shall limit the liability of the Contractor to pay the Authority its share of the sale price of the Residual Assets or affect any claim by the Authority for any breach of the Contract. The Contract may be terminated at any time in accordance with Condition 9.3.

9.3. The Authority shall, in addition to its power under any other of the Clauses of the Contract, have the power to determine the contract terminated by providing the contractor written notice to expire within 20 business days, and upon expiry of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of termination.

10. PRICING/PAYMENT ARRANGEMENTS

Applicable DEFCONs:

DEFCON 509 – Recovery of Sums Due

DEFCON 513 – Value Added Tax

DEFCON 523 – Payment of Bill Using BACS System

DEFCON 534 – Prompt Payment (Subcontracts)

10.1. The Contractor shall pay the Authority [REDACTED] percent ([REDACTED]) of the Net Selling Price achieved through sale, re-use or recycling of Aerospace and Land System Residual Assets and [REDACTED] percent ([REDACTED]) of the Net Selling Price achieved through sale, re-use or recycling of Naval System Residual Assets and shall be wholly responsible for all costs arising from the sale. In addition the Contractor shall pay VAT on all sums due to the Authority at the appropriate rate.

10.1.1 The Contractor shall be fully responsible for all costs relating to the receipt, accounting, collection, transportation and sale of the Residual Assets, including all local duties, taxes, fees and import/export duties.

10.2. Payment to the Authority shall be in (£) Pounds Sterling.

10.3. Where MoD assets are received in error in accordance with Condition 3.7, or where Residual Assets are recalled by the Authority in accordance with Condition 5.2.1 or are subject to restrictions imposed by the Authority in accordance with Condition 5.2.2, the costs incurred by the Contractor as a direct consequence of such error, recall or restriction, shall be identified by the Contractor. Thereupon, the Contractor shall

submit to the Authority (the Project Manager named at Box 2 of DEFFORM 111) a claim for consideration. Provided the Authority is satisfied that the costs have been necessarily incurred, the claim shall be approved and then claimed following the P2P procedure. All such costs and offsetting revenues should be included in the Operating Statement, and be clearly auditable. The Contractor shall endeavour to minimise such costs as far as is possible.

10.4. Payment to the Authority, shall be effected as follows:

10.4.1. The Contractor shall pay the Authority the agreed percentage share of the Net Selling Price. In addition the Contractor shall pay VAT on the sums due to the Authority at the appropriate rate.

10.4.2. The Contractor shall, within 4 days after the end of each calendar month, ensure that the Authority has received:

10.4.2.1 the percentage payment due in accordance with condition 10.1 above; and the percentage payment to the Authority shall be based on cash received the previous month.

Note: In the event that the end purchaser fails to make payment to the contractor the Authority will not be liable for any bad debts, it will be the contractors responsibility to ensure that the Authority receive its full percentage share of revenue. Any late payments not received will be discussed at the progress meetings

10.4.3. Payment to the Authority shall be rendered using the Proforma at Annex B. On receipt of each payment, a formal invoice shall be issued by DFM FM SSC (refer to Box 12 of the DEFFORM 111). Payments shall be made payable to "The Accounting Officer, Ministry of Defence" and preferably made by direct credit transfer.

10.5. Minimum Guaranteed Price (MGP). The Authority may identify for disposal Residual Assets, which will be offered to the Contractor on the basis of an MGP, agreed at the outset. The Contractor shall handle Residual Assets subject to the provisions of this Condition in the same way as other Residual Assets, except that the financial return applied shall be as follows:

10.5.1. The Authority shall offer, in writing, Residual Assets to the Contractor stating a MGP. This price shall be based upon the sum which the Authority could by reference to data pertaining to previous sales of similar items, whether by competitive tender or by public auction, reasonably expect to achieve taking into account the Authority's own costs of achieving such a sale, including commissions paid to sales agents;

10.5.2. The Contractor shall respond to this offer within 5 days. If accepted, the Authority will issue a formal tasking notice authorising the Contractor to proceed;

10.5.3. The percentage split applied to items accepted and sold under this Condition shall be agreed for each declaration as and when they arise;

10.5.4. The agreed MGP shall be the minimum amount payable by the Contractor to the Authority following the sale of these Residual Assets; with only the difference between the MGP and the final sales price subject to a percentage split between the Authority and the Contractor. The MGP will be payable on the date identified with the tasking notice, whether or not a sale has been achieved.

10.5.5 Any Residual Assets, subject to an MGP, that remains unsold after four months collection shall be reported by the Contractor at the next progress meeting for review by both parties.

10.6. Minimum Selling Price (MSP). The Authority may wish to invoke the use of MSP to particular residual assets tasked to the Contractor. The Contractor will be deemed to have accepted the MSP, unless, the Contractor notifies the Authority otherwise either, within the costed report following a site visit, or within 10 days of collection. Should the Contractor believe the condition of the Residual Asset does not support the MSP applied, they shall submit to the Authority their own valuation of the Asset together with supporting evidence. The Authority shall consider the matter and advise the Contractor of any revision to the MSP. The Authority's decision in this regard shall be final and the Residual Asset shall not be sold below the MSP without formal written approval from the authority. Any Residual Assets, subject to an MSP, that remains unsold after four months collection shall be reported by the Contractor at the next progress meeting for review by both parties.

10.7. The Authority reserves the right to reasonably challenge prices achieved/costs incurred for any residual assets sold under the Contract, and the Contractor shall provide detailed evidence to support the price achieved and/or cost incurred. In the event that this evidence fails to fully satisfy the Authority, and the Parties are subsequently unable to reach agreement, a mutually agreed independent expert shall be appointed to arbitrate in accordance with DEFCON 530 and Condition 16.

10.8. In the event that the Contractor repairs/refurbishes Residual Assets for sale, documentary evidence of all costs, and evidence of increased return to the Authority, should be submitted to the Authority on a monthly basis. Such costs shall be deducted from the actual price obtained for the repaired/refurbished asset(s) and shall be claimed following the sale of the asset(s).

10.9 In some circumstances sales to other countries will differ to those within the United Kingdom and on occasions the payment for any residual asset will be delayed. Contractor is to notify the Authority in the case of any delay.

10.10 Service Credits. Service credits will be applied to this Contract as follows:

10.10.1 For each day in achieving the specified performance a standard sum of [REDACTED] will be payable to the Authority for every KPI not met, up to a maximum of [REDACTED] per event.

10.10.2 The annual maximum exposure against KPI failure with be [REDACTED]

11. SAFETY, HEALTH, ENVIRONMENT AND QUALITY

11.1 The service, and each constituent part, shall be supplied by the Contractor in compliance with all relevant law including but not limited to all extant Safety, Health, and Environmental legislation, regulations, codes of practice, and guidance.

11.2 The Contractor shall maintain ISO 9001:2008 and ISO 14001:2004 certification (or equivalent) by a UKAS accredited authority (or issued by certifying bodies that are accredited by an organisation that is a signatory of the International Accreditation Forum Multi-Lateral Agreement (IAF-MLA) , and shall inform the Authority should they lose such accreditation.

11.3 The Contractor shall immediately inform the Authority should they be in receipt of a notification of prosecution against the Contractor, any of their Directors or sub-contractors, from either the Environment Agency or the Health & Safety Executive.

11.4 During the period of contract, the Authority shall regularly visit the Contractor to undertake a Duty of Care audit, relating to Health & Safety and Environmental managements issues. Prior to each visit, the Authority will provide the Contractor with two questionnaires. The audit itself will then comprise of a review

of all documentation relating to Safety, Health, and Environmental (SH&E) management and legislative compliance, and physical assessment of the site and work practices to ensure their compliance with the Contractor's SH&E Management Systems. The first audit will occur within 3 months of contract award, further audits will be carried out at the 18, 42, 60 and 78 month points. After each audit, the Authority shall produce a report which shall be copied to the Contractor. The Contractor shall act upon the recommendations within the audit report within the timescales detailed in the report.

11.5 The Contractor shall possess at commencement of the Contract the following certificates/licences/permits/authorisations:

11.5.1 Certificate of registration as a Firearms dealer in accordance with Section 5 of the Firearms Act;

11.5.2 Permits to allow for the keeping, use of and disposal of radioactive materials covered in the Radioactive Substances Act 1993 (Scotland and Northern Ireland) and/or the Environmental Permitting (England and Wales) Regulations 2010 as amended, and

11.5.3 Authorisation from the Health & Safety Executive to work with materials covered by the Ionising Radiation 1999 as amended;

11.5.4 Environmental Permits that relate to collection, transportation and storage pending disposal of Hazardous Waste in accordance with COSHH regulations;

11.5.5 Licenses for any Authorised Approved Test Facilities (AATF) proposed for processing prior to disposal of Waste Electronic and Electrical equipment (WEEE)

11.5.6 Possess a valid ITAR Brokers Licence

11.5.7 Security clearance to List X to allow for the storage of classified equipment or material up to the level of SECRET.

12. BANK GUARANTEE

12.1 The Contractor shall hold a valid irrevocable bank guarantee for the Contract in the form shown at Annex A, from a bank that shall be subject to acceptance by the Authority. The value of the guarantee shall be £200,000 (Two Hundred Thousand Pounds) but this value shall be subject to regular review. If for any reason during the period of Contract the Guarantee is withdrawn or changed in any way, the Contractor shall immediately notify the Authority. No sales shall be made under the Contract, nor any Residual Assets tasked to the Contractor, should an acceptable Guarantee not be held by the Contractor.

13. RESIDUAL ASSETS INVENTORY AND RECORD KEEPING

Applicable DEFCONs:

DEFCON 609 – Contractor's Records

13.1. In order to properly track and account for the Residual Assets transferred to the Contractor under the Contract, the Contractor shall perform appropriate documentation checking and inspection and maintain a full item based accounting system in accordance with the procedures at Paragraph 2 of Annex C.

13.2. The accounting system shall be to the satisfaction of Defence Internal Audit, Asset Accounting Centre (DIA AAC) in accordance with Annex G, and DIA AAC shall carry out such audits as are considered necessary by the Authority.

14. CONTRACTOR PERSONNEL WORKING AT MoD OR OTHER GOVERNMENT ESTABLISHMENTS

Applicable DEFCONs:

DEFCON 76 – Contractor's Personnel at Government Establishments

DEFCON 529 – Law (English)

14.1. The Contractor hereby warrants and undertakes to the Authority that it shall carry out its obligations under the Contract with all reasonable care in accordance with the provisions of DEFCON 76 and this Condition 14.

15. INSURANCE

15.1. The Contractor shall:

15.1.1 indemnify the Authority and any servant or agent of the Authority against liability of whatever nature, including, but not exclusive of, any costs, damages, claims recoverable at law or arbitration under DEFCON 529, or expenses arising in respect of any loss, damage or injury (whether or not resulting in death), in property or person, caused by an act or omission on the part of the Contractor, its employees, agents and subcontractors;

15.1.2. effect and maintain, with a reputable insurance company, a policy or policies providing an adequate level of insurance cover in respect of all risks which may be incurred by the Contractor arising out of its performance of the contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given, or omitted to be given, by the Contractor;

15.1.3. hold employer's liability insurance in respect of staff, in accordance with any legal requirement in force;

15.1.4. provide the Authority, on request, copies of all insurance policies referred to in this Condition, or a broker's verification of insurance, to demonstrate that the appropriate cover is in place, together with evidence of payment of the latest premiums due under those policies; and,

15.2. If, for any reason, the Contractor fails to effect and maintain the insurances required by the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

15.3. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

16. DISPUTE RESOLUTION

Applicable DEFCONs:

DEFCON 529 – Law (English)

DEFCON 530 - Dispute Resolution

16.1 Each Party shall bear its own costs and expenses in any Arbitration proceedings including expenses in respect of lawyers, accountants or other experts and shall bear in equal proportion the administrative fees and other expenses associated with the Arbitration unless and until the arbitrator in this award assesses such costs, fees and expenses or any part thereof against either Party to the Contract.

16.2. If any condition of the Contract, or its application to either Party, is invalid, such invalidity shall be corrected by the substitution, with the agreement of both Parties, of one or more alternative valid provisions which come as close as possible to the intentions of the Parties. Failing which, the matter shall be resolved by Arbitration under DEFCON 530.

17. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TUPE)

17.1. Definitions

In this Condition unless the context otherwise requires and without prejudice to the provisions of Condition 2 (Definitions), the following expressions shall have the following meanings:

17.1.1. "Business Day" means any day excluding:

17.1.1.1. Saturdays and Sundays;

17.1.1.2. any public and statutory holidays in the UK; and,

17.1.1.3. privilege days.

17.1.2. "Contract Award Date" means the date of the Contract.

17.1.3. "Contractor Default" means the Contractor's inability to perform their contractual obligations within the timescales detailed in the Contract.

17.1.4. "Employee Liability Information" has the same meaning as in regulation 11(2) of the Transfer Regulations.

17.1.5. "Expiry Date" means the date of expiry of the Contract by whatever means.

17.1.6. "New Provider" means any replacement service provider nominated by the Authority to provide the Services, or the Authority itself where the Services or substantially similar services continue to be provided by the Authority upon or after the termination or expiry of the Contract.

17.1.7. "Previous Contractor" means name of previous contractor.

17.1.8. "Previous Contractor Employee" means an employee who immediately prior to 0001 hours on the Relevant Transfer Date is an employee of the Previous Contractor and assigned to carry out the services, which will be performed by the Contractor under the Contract.

17.1.8. "Previous Contractor Third Party Employee" means an employee of any third party employer contracted to provide services to the Previous Contractor the same as or similar to any of the Services who immediately before the Relevant Transfer to the Contractor or any Sub-Contractor is employed or engaged to carry out those services.

17.1.9. "Previous Relevant Transfer Date" means the date of transfer under the Transfer Regulations of the Ex-Authority Employees to the Previous Contractor.

17.1.10. "Relevant Employee" means the Previous Contractor Employees and the Previous Contractor Third Party Employees;

17.1.11. "Relevant Statutory Scheme" has the same meaning as in regulation 8 of the Transfer Regulations.

17.1.12. "Relevant Transfer" means a transfer to the Contractor or Sub-Contractor of the Relevant Employees pursuant to the contract and the Transfer Regulations.

17.1.13. "Relevant Transfer Date" means the date on which the Relevant Transfer is affected.

17.1.14. "Services" means the provision of a complete disposal service for equipment sub-systems and spares from Ships and other vessels, Aircraft and Land Based Weapon Systems, Training Aids, Communications equipments, and STTE as set out in Condition 3.1 and Annex E to the Contract, and Schedule 2.

17.1.15. "Service Commencement Date" means the date of commencement of the Services (if different from date of contract award);

17.1.16. "Sub-Contractor" means any person who enters into a Sub-Contract with the Contractor.

17.1.17. "Subsequent Transferring Employee" means an employee assigned, engaged or employed in the provision of the Services who is transferred under the Transfer Regulations to a New Provider on expiry or termination of the Contract.

17.1.18. "Subsequent Contract" means the contract for Services with the New Provider.

17.1.19. "Subsequent Contract Award" means the award of a contract for the Services to a New Provider.

17.1.20. "Subsequent Relevant Transfer" means a transfer of employees assigned, engaged or employed in the provision of the Services from the Contractor or any Sub-Contractor to a New Provider under the Transfer Regulations.

17.1.21. "Subsequent Transfer Date" means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations.

17.1.22. "Third Party Employees" means the employees of any third party employer contracted to provide services to the Authority the same as or similar to any of the Services who immediately before any relevant transfer of those services (within the meaning of the Transfer Regulations) to the Contractor or any Sub-Contractor is employed or engaged to carry out those services.

17.1.23. "Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

17.2. Employees

17.2.1. No later than four (4) weeks prior to the Service Commencement Date, the Authority shall provide the Contractor with the information listed in Annexes I and J in respect of Relevant Employees, together with any Employee Liability Information in respect of such Relevant

Employees, to the extent that such information and Employee Liability information has been provided to the Authority by the previous Contractor.

17.2.2. The Authority shall provide the Contractor with any update to the information and Employee Liability Information provided under Condition 17.2.1 as soon as is reasonably practicable.

17.2.3. The Authority does not warrant the accuracy of the information provided under Conditions 17.2.1 and 17.2.2 above.

17.2.4. The Contractor and the Authority acknowledge that the provision of the Services under the contract will constitute a Relevant Transfer.

17.2.5. The Contractor agrees that, from the Relevant Transfer Date, the contracts of employment of any Relevant Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor and the Relevant Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to regulation 9 of the Transfer Regulations, where applicable.

17.2.6. Save for any liabilities in respect of Relevant Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, holiday entitlement accrued up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Relevant Employees with effect from and including the Relevant Transfer Date until the Expiry Date.

17.3. Post Transfer Reporting

17.3.1. The Contractor shall provide the Authority with the following information as part of the normal reporting regime of the Contract on an annual basis (to include information relating to employees transferred under the Transfer Regulations to Sub-Contractors as a result of the Contract):

17.3.1.1. any proposed, agreed or imposed changes to terms and conditions of service in respect of persons wholly or mainly employed or engaged in provision of the Services under the Contract;

17.3.1.2. details of any disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;

17.3.1.3. details of any court action or tribunal proceedings relating to compliance with the Transfer Regulations;

17.3.1.4. details of any completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and,

17.3.1.5. out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement and the Contractor acknowledges that the information referred to in this Condition 17.3 may also be used in considering the

Contractor's bid to re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

17.4. Information on Re-tender, Expiry or Termination

17.4.1. No earlier than two years preceding the Expiry Date, or at any time after the service of a notice to terminate or other expiry of the contract, and on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Sub-Contractor shall):

17.4.1.1. supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Annex I to the Contract relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services under the Contract;

17.4.1.2. provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;

17.4.1.3. permit the Authority to use the information for informing any prospective New Provider for any services which are substantially the same as the Services provided pursuant to the contract; and,

17.4.1.4. enable and assist the Authority and a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

17.4.2. On notification by the Authority of a New Provider, or any time within 6 months of the Expiry Date or after the Authority has given notice to terminate or other expiry of the contract, whichever is first, and on receipt of a written request by the Authority, the Contractor shall:

17.4.2.1. fully and accurately disclose to the Authority such information listed in Annex J to the Contract, including any Employee Liability Information relating to their employees and relating to all employees of any third party who are employed, assigned or engaged in providing the Services under the Contract;

17.4.2.2. provide the information promptly and in any event not later than three months from the date when a request for such information is made (save when the written request is received less than 3 months prior to the Expiry Date, in which case no later than 28 days from the date of that request) and at no cost to the Authority; and,

17.4.2.3. permit the Authority to use the information for informing any prospective New Provider for any services which are substantially the same as the Services provided pursuant to the Contract.

17.4.3. On notification to the Contractor by the Authority of a New Provider or within 6 months of the Expiry Date or after service of a notice to terminate or other expiry of this Contract, whichever is first, and on receipt of a written request by the Authority, the Contractor shall not:

17.4.3.1. materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services;

17.4.3.2. replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase the number of persons performing the Services;

17.4.3.3. reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services any duties unconnected with the Services; or,

17.4.3.4. terminate, or give notice to terminate, the employment of any person wholly or mainly employed or engaged in providing the Services save for genuine business reasons without the prior written agreement of the Authority, such agreement not to be unreasonably withheld or delayed, and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Conditions 17.4.2, 17.4.3 and 17.4.4.

17.4.4. The Authority may at any time prior to the period set out in Condition 17.4.2 request from the Contractor any of the information in paragraphs 1(a) to (d) of Annex I to the Contract and the Contractor shall provide the information requested within three months of receipt of that request.

17.4.5. On expiry or termination of the Contract, any redundancy costs shall be the responsibility of the Contractor.

17.5. Indemnities on subsequent TUPE transfer on expiry or termination of the Contract

17.5.1. In the event that, on expiry of the Contract, there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority against all reasonable costs, (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:

17.5.1.1. any claim or claims by Subsequent Transferring Employees or by the New Provider or any sub-contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Contractor or any Sub-Contractor during the period from and including the Relevant Transfer Date and prior to the Subsequent Transfer Date; and,

17.5.1.2. any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Sub-Contractor.

17.5.2. In the event that there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

17.5.2.1. the employment or the termination of the employment of each of the Subsequent Transferring Employees by the New Provider or any Sub-Contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the New Provider or any Sub-Contractor of the New Provider during the period from and including the Subsequent Transfer Date; and,

17.5.2.2. any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the New Provider or any Sub-Contractor of the New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any Sub-Contractor of the New Provider.

17.6 Contracts (Rights of Third Parties) Act 1999

17.6.1. A New Provider may enforce the terms of Condition 17.5 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

17.6.2. The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate the Contract.

17.6.3. Nothing in Condition 17.6.2 shall affect the accrued rights of the New Provider prior to the rescission, variation or termination of the Contract.

18. SECURITY MEASURES

Applicable DEFCON:

DEFCON 531 – Disclosure of Information

Applicable Annex:

Annex O – Security Aspects Letter

18.1 In this Condition:

18.1.1 'Secret Matter' means any matter, whether equipment of information, connected with the Contract, or its performance which is designated by the Authority in the security aspects letter annexed to the Contract or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

18.1.2 'Employee' shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.

18.2 The Official Secrets Acts, The Contractor shall:

18.2.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and

18.2.2 if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

18.3 Security Measures

18.3.1 Unless they have the written authorisation of the Authority to do otherwise, neither the Contractor nor any of their Employees shall, either before or after the completion or termination of the Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

18.3.2 who is not a British citizen;

18.3.3 who does not hold the appropriate authority for access to the protected matter;

18.3.4 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;

18.3.5 who is not an Employee of the Contractor;

18.3.6 who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.

18.4 Unless they have the written authorisation of the Authority to do otherwise, the Contractor and their Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

18.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;

18.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

18.5 The Contractor shall:

18.5.1 provide to the Authority:

18.5.1.1 upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Sub-clause 4.b.);

18.5.1.2 upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and their Employees are complying with their obligations under this Condition, including the measures taken or proposed by the Contractor so as to comply with their obligations and to prevent any breach of them;

18.5.1.3 full particulars of any failure by the Contractor and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

18.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in Sub-clause 19.4.1.1), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with the Contract and

inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as they may reasonably require.

18.6 If at any time either before or after the completion or termination of the Contract, the Contractor or any of their Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.

18.7 If the Contractor proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Contractor shall:

18.7.1 submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;

18.7.2 incorporate into the sub-contract the terms of the Appendix to this condition and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor";

18.7.3 inform the Authority immediately they become aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract.

18.7.4 The Authority shall be entitled to terminate the Contract immediately if:

18.7.5 The Contractor is in breach of any obligation under this Condition; or

18.7.6 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.

19. COMPLIANCE WITH ELECTRONIC TRANSACTION AGREEMENT

19.1 This contract will utilise electronic purchasing via Purchase to Payment (P2P).

19.1.1. The Authority and the Contractor shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30; reference [REDACTED]. The sending by the Contractor of an "Acknowledgement of Receipt" Message is to be regarded as acceptance of the Purchase Order Message to which it refers, unless the Purchase Order Message itself constitutes acceptance in accordance with the terms and conditions of the Contract.

19.1.2. DEFCON 522 – Payment is replaced by DEFCON 522J – Payment under P2P and DEFCON 522JA Payment under P2P matching the Invoice and Order (Two Way Match).

19.1.3. Messages under DEFFORM 30 received by the contractor shall be regarded as having been authorised by the Authority.

19.1.4. Releases/orders against all items of the Schedule of Requirements shall be allocated unique Order Identifiers when these are produced by the P2P system.

20. EXISTING CONTRACTS CREATED OFFLINE

20.1. Where an offer and acceptance has already taken place off-line to establish the Contract, the Authority shall issue a purchase Order Message in order to establish Unique Order Identifiers for the Items on the Schedule of Requirements for the purpose of subsequent P2P transactions. The Contractor shall respond with an Acknowledgement Message. In these circumstances, Purchase Order Messages serve only to convey to the Contractor the information necessary against which to supply an item, prepare a delivery label and to submit an Invoice Message; the Purchase order Acknowledgement Message serves only to confirm receipt of a Purchase Order Message. No new contract is understood to be formed by this Purchase Order transaction.

20.2. The Authority shall hold the Contractor harmless for any delay or failure by the Authority to issue a Purchase Order. However, any delay or failure to issue a Purchase Order shall not relieve the Contractor of his obligations under the Contract.

21. ASSIGNMENT AND NOVATION

21.1. Notwithstanding any provisions to the contrary in this Contract or in any other agreement between the Parties, at any time during the Term the Authority may:

21.1.1 appoint a Managing Agent to manage and operate all or any part of this Contract for and on behalf of the Authority and to give directions to the Contractor; and/or

21.1.2 novate the whole of this Agreement to:

- a Managing Agent; or
- a third party; and/or

without the Contractor's consent assign the benefit of this Agreement to a Managing Agent.

21.2 The appointment of a Managing Agent and/or the assignment or novation of this Contract shall be at the sole discretion of the Authority notwithstanding the provisions of DEFCON 518.

21.3 The Authority shall give the Contractor at least 60 Business Days written notice of its intention to appoint a Managing Agent and of the identity of the Managing Agent; and save where this Agreement is also assigned or novated to the Managing Agent:

21.3.1 the Authority shall notify the Contractor of the scope of the Managing Agent's authority;

21.3.2 the Contractor shall, within the limits of the authority notified to it under Clause 21.3.1 and subject to Clause 21.3.3, treat and deal with and accept the directions and instructions of the Managing Agent as the Authority's agent for the duration of such appointment or until this Agreement is assigned or novated to the Managing Agent;

21.3.3 notwithstanding anything else in this Condition 21, the Managing Agent shall not have the authority to amend the terms or conditions of this Agreement or to agree to any Changes under this Agreement.

21.4 Where the Authority notifies the Contractor that it proposes to novate this Agreement to a Managing Agent, the Contractor shall promptly take all such steps, carry out all such actions and execute and deliver all such instruments and documentation as may be necessary or expedient to give effect to the novation.

21.5 Notwithstanding any provisions to the contrary in this Agreement (or any other agreement) or the provisions of DEFCON 531 (if applicable), the Authority may disclose the whole or any part of this Contract to any Managing Agent and to Potential Managing Agents, including (without limitation) any relevant confidential and/or commercially sensitive information; and the Contractor shall disclose to any Managing Agent and/or Potential Managing Agent any such information as the Authority requests. Where the consent of any third party is required before confidential information can be disclosed, the Contractor shall use its best endeavours to obtain such consent.

21.6 The Authority shall notify the Contractor of the identity of any Potential Managing Agent to whom it makes disclosure under Condition 21.5. The Contractor acknowledges and agrees that both for the purposes of DEFCON 531 and otherwise any such disclosure is made with its prior written consent.

21.7 There shall be no increase in the agreed contract prices or additional sums payable by the Authority arising out of or in connection with the assignment or novation of this Agreement pursuant to this Condition 21 except in relation to any necessary administration costs. The Contractor shall only be entitled to claim such costs to the extent necessary to put it in no better or worse a position than if the assignment or novation had not taken place.

21.8 The Contractor acknowledges and agrees that where this Agreement is not novated or assigned, the Authority shall in any event be entitled in its sole discretion to appoint a Managing Agent.

21.9 Whether or not the Managing Agent is a Contracting Authority for the purposes of this Agreement shall not affect the validity of this Agreement, the appointment of the Managing Agent and/or the assignment or novation of this Agreement.

21.10 Definitions:

21.10.1 "Contracting Authority" has the meaning given to it in the Public Contracts Regulations 2006 (SI 2006 No. 5).

21.10.2 "Managing Agent" means a private or public sector body or entity which is responsible for managing and operating this Agreement as agent for and on behalf of the Authority, including (without limitation) a government owned, contractor operated ("GOCO") entity, an executive non-department public body with a strategic partner ("ENDBP/SP") or a minister of the Crown.

21.10.3 "Potential Managing Agent" means a body or entity bidding for an agreement to be the Managing Agent or with whom the Authority proposes to enter into such an agreement.

22. **COMMERCIAL RISK**

22.1 The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the parties. The issuing of any risk assessment

questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):

22.1.1 particular risks and their impact, or

22.1.2 risk reduction measures, contingency plans and remedial actions,

22.2 shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract.

23. STRATEGY ON EXPIRY OF CONTRACT

23.1 The Contract will expire on the 30th April 2019, however, the expiry will not relieve the Contractor of his contractual obligations. In accordance with Condition 9.1 a minimum period of 12 months, to be negotiated in the final year of the contract, shall be allowed from the date of the Contract expiry to progress outstanding tasks and either sell or declare unsold residual assets to the Authority. This allows until 30th April 2020 to affect Contract closure.

23.2 Tasking and Outstanding Tasks. The Authority will not place any further tasks against this Contract post expiry. However, the Authority will provide a list of outstanding tasks that have already been placed against the Contract. The Contractor should at this time ensure that the Residual Assets, confirmed as collected, will be marketed for sale or notified to the Authority in accordance with the terms of the Contract.

23.3. Residual Assets. The Contractor should proceed with the marketing and sale or notify any residual assets in accordance with the Contract. The Contractor will notify the Authority of any Residual Assets still in their possession at the end of the Contract in accordance with Condition 23.4.

23.4. Residual Assets Inventory and Record Keeping. The Contractor should continue to track and account for any remaining Residual Assets in accordance with Condition 13 and Annex C of the Contract. The Contractor is expected to provide a list of Residual Assets held at Contract end and advise the Authority of the Contractors plan for regarding sale/return. At the end of the period allowed for Contract closure the Authority will arrange for the Asset Accounting Centre to audit and formally close the account.

23.5. Working Procedures. All work should continue to be progressed in accordance with Contract Condition 6 and Annex C in particular and that both Parties proceed with their obligations in accordance with all other Terms and Conditions.

23.6 Payment Arrangements. Payment procedures shall remain as detailed at Contract Condition 10, until the last assets have been sold and monies returned.

23.7. Bank Guarantee. In accordance with Condition 12 – A Bank Guarantee must remain in place for the entire closure period, and for one month thereafter.

23.8. Contract Closure Meeting. At the end of each quarter after Contract expiry the Authority will arrange post expiry meeting to confirm that all obligations in respect of the Contract have been met by both Parties.

MINISTRY OF DEFENCE - DEFFORM 24A

BOND GIVEN BY A BANK AS A DEED IN RESPECT OF A SINGLE CONTRACT

Name of Issuing Bank:

Address:

To: The Secretary of State for Defence

We refer to the contract number DSACOMDD/5037 (the 'contract'), as may be amended at any time, awarded on [insert contract date] to [insert contractor's full corporate name] whose registered number is [insert company registered number] (the 'contractor') and we hereby irrevocably and unconditionally agree:

1. to pay you any amount or amounts not exceeding in aggregate the sum of £200,000 upon receipt by us at [insert address] of your first demand in writing certifying that any one or more of the following has occurred:

- a) the contractor has failed in any respect duly to perform and observe, or is otherwise in breach of any of its obligations in and arising from the contract; or
- b) any of the contractor's obligations in and arising from the contract are or become void, voidable, unenforceable or otherwise ineffective; or
- c) the contract has been terminated owing to a breach or an event of default on the part of the contractor; or
- d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the contractor's undertaking or assets;

For the purposes of this bond any such demand and certification(s) shall be conclusive evidence (and admissible as such) of the statements and the amounts claimed therein;

2. that this bond shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the contractor or any other person or, where the contractor is a partnership, by any change in the partners;

3. that we shall not be discharged or released from our obligations under this bond by any arrangement or agreement made between you and the contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the contractor, or by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to our disadvantage, to or of, the obligations imposed upon the contractor or any other person or by any forbearance granted by you to the contractor or any other person as to payment, time, performance or otherwise or by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this bond relates or by any other matter or thing which but for this provision might exonerate us and this notwithstanding that such arrangement, agreement,

renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without our knowledge or assent;

4. that no failure to exercise or any delay in exercising on your part any right or remedy under this bond or under the contract or any other agreement shall operate as a waiver of such right or remedy;

5. that no settlement or discharge between you and us or the contractor shall be effective if any payment to you in respect of the contractor's or our obligations to you is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, you shall be entitled to recover from us the amount of such payment as if such settlement or discharge had not occurred;

6. that you shall not be obliged, before exercising any of your rights under this bond, to take any action against, or make any demand from, the contractor or any other person;

7. that our obligations under this bond are continuing obligations and shall not be considered satisfied, settled or terminated by your giving of any approvals, or taking delivery of any goods, or accepting any performance under the contract and no single, cumulative or partial exercise by you of any right or remedy under or arising from this bond shall prevent any further exercise;

8. that any demand(s) complying with all the requirements hereof must be received by us on or before [insert date];

9. that all payments under this bond shall be made without set-off, counter claim or other deduction;

10. that this bond shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

(The following clause should only be used where the bank is outside of England and Wales)

11. we irrevocably appoint Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as our agents to accept on our behalf service of all process and other documents of whatever description to be served on us in connection with this bond or any related matter.

Dated this [] day of [] 20[]

Executed as a deed by [full name of party] as Attorney and on behalf of [bank] in the presence of:

.....[signature of party]

.....[Signature of Witness (Bank Official)]
[Address of Witness]
[Occupation of Witness]

PAYMENT PROFORMA AND INSTRUCTIONS TO RAISE INVOICE

TO: Receipts Cashier

COPY TO: DSA CD2B

Ministry of Defence
DGFM FM SSC
Walker House, Exchange Flags
Liverpool L2 3YL

Ministry of Defence
Bldg 9, H Site
Ploughley Road
Arcott, Bicester OX25 2LD

E-mail address: DFM-FMSSC-IR-AMI2-1RevCashShared@mod.uk

FROM: Name of Contractor

Address

.....

**CONTRACT FOR A DISPOSAL SERVICE OF SURPLUS EQUIPMENT SPARES & MATERIEL FOR
MILITARY PLATFORMS**

PART A

1. Payment No DSACOMDD/5037.....
2. Sum due to MoD under Condition 10 of the Contract £..... excluding VAT. This
represents all sums due to MoD under the Contract for this period.
3. VAT £.....VAT RATE%
VAT £VAT RATE%
4. Total sum due to MOD: £.....
5. Cheque No..... datedfor the sum of £..... is enclosed.
6. Tax point date:

Signed

Position

Dated

PART B

FOR MoD USE ONLY

CONTRACT FOR THE DISPOSAL OF SURPLUS MILITARY EQUIPMENT

FROM: DGFM FM SSC

TO: Disposal Services Authority

Payment No. DSACOMDD/5037..... For the sum of £was received on.....

SignedDated

DSA ORIGINATOR CODE **0798**
SUSPENSE ACCOUNT LPC **ZZZG85V001**

INVOICE NO.

WORKING PROCEDURES

The working procedures included in this Annex shall be undertaken in conjunction with Contract Condition 4 – Undertakings by the Authority and Contract Condition 5 – Responsibilities of the Contractor

1. Notification and Collection

1.1. On notification by the Authority of Residual Assets, the Contractor shall contact the unit/establishment and, unless otherwise agreed shall collect all Residual Assets within 10 days of the Authority's notification (as appropriate). The Authority shall be notified immediately if any extension is agreed with the unit/establishment.

1.1.1 Where specifically requested, the Contractor shall conduct a site visit within 5 days of the date of such a request and shall submit a costed report, including an estimate of the gross sales value, within 5 days of that site visit. Should this report be accepted by the Authority, the Contractor shall contact the unit/establishment and, unless otherwise agreed shall collect the Residual Assets within 10 days.

1.1.2 Additional collection requirements to support special projects will require the contractor to be agile, flexible and as required, operate outside of the standard 10 working day collection. Two collection variants are in operation, which only apply to some elements of the Air Domain surplus stock, but may change subject to the Authority's requirements.

1.1.2.1 Special Project Collection Option 1 – Operation of a 10 working day pick system.

Day 1 – The Authority will produce a pick list for the 10 day pick, and provide the Contractor with the details of the intended pick.

Day 2 to Day 9 - As the pick progresses, the Contractor will be provided with daily volume updates.

Day 10 – The pick is completed, and the Contractor is provided with the final Residual Asset list and the tasking notice is formally raised.

Day 12 – The Contractor completes collection of all Residual Assets.

In the event that the proposed pick is of significant volume the Contractor may request that Residual Assets are tasked on a phased basis over the 10 day pick to enable collection to commence before day 10. It is anticipated that tasks issued under this process could exceptionally be as much as 30 40' loads.

1.1.2.2 Special Project Collection Option 2 – Operation of a Regional calendar month pick system.

Day 1 - The Authority will produce a pick list for the 20 day pick, and provide the Contractor with the details of the intended pick and the locations of the Residual Assets Note: Residual Assets covered by the pick will be in different locations.

Days 7 and 14 -. As the pick progresses, the Authority will provide updates on the progress of the pick to the Contractor.

Day 20 - The pick is completed.

Day 21 - the Contractor is provided with the final Residual Asset list and the tasking notice is formally raised.

Day 30 - The Contractor completes collection of all Residual Assets, on the last working day of the calendar month.

1.1.2.3 In the event that the Authority identifies any other special projects that would vary collection requirements, these will be considered and agreed on a case by case basis.

1.2. The Contractor shall provide, to the extent necessary to comply fully with the requirements of the Contract and with all relevant legislation, suitable transport, handling and loading capability to remove the Residual Assets from the appropriate sites.

1.3 It is the Contractor's responsibility to ensure that health and safety legislation is observed at all times.

1.4 The Authority gives no guarantee that assistance will be provided with the loading or transporting of Residual Assets although, where possible, the Authority will endeavour to assist. The Contractor shall comply with all relevant Security Regulations when employed on MoD sites.

1.4.1 The Contractor shall provide transport media, including packaging, pallets and labour, unless otherwise agreed with the consigning unit. In the event that the Contractor utilises the Authority's assets (e.g. post/caged pallets), the Contractor shall ensure that they are returned to the Authority within 2 months or, if lost, replaced on a like for like basis by agreement with the Authority. The Contractor shall ensure the safety of all loads transported from the Authority's premises. All relevant details in respect of transport media shall be included in the Contractor's reports and will be discussed at each quarterly review meeting.

1.5 Collections shall be carried out during normal business hours (Monday – Thursday, 0900 – 1600 and Fridays 0900 – 1200), unless otherwise agreed with the establishment point of contact.

2. Accounting and Reporting

2.1. Each consignment of Assets shall be supported by documentation (in the form of Issue Vouchers or an inventory listing) provided by the Authority. The Contractor shall conduct a receipt check against the Issue Vouchers/Inventory listing and raise Discrepancy Reports as necessary, in accordance with paragraphs 6.1 to 6.6 herein. Receipted vouchers shall be returned to the declaring establishment.

2.1.1 The Contractor shall record the material state of the residual assets, including photographs where required.

2.2 The Contractor shall maintain an item based accounting system for all Residual Assets transferred under the Contract. Detailed records to be maintained of all purchasers, as well as full recycle and disposed of as waste details where appropriate. The system shall be subject to the approval of, and subsequent audit by, UK MoD's Defence Internal Audit Asset Accounting Centre (DIA AAC)

2.2.1 For items deemed saleable by the Contractor, a full item based stock account shall be kept for all equipment with an issue voucher price of £50.00 or more per unit, unless identified by the Authority.

2.2.2 For items deemed saleable by the Contractor where the Authority's Issue Voucher price is less than £50.00 per unit, the Contractor shall bring such items onto the public account to the same commercial standard as they would need for their own purposes for sale.

2.2.3 A record of all items recovered from breaking down equipment or assemblies should be recorded.

2.3 For Assets deemed not saleable and suitable only for recycling, the Issue Voucher may be annotated that the equipment has been sorted and identified for recycling. Records shall be retained for inspection in all such instances. In such instances, the Authority will deem such recycling as an immediate sale and the inventory excluded from DSA registers. Where advised on the reports that Residual Assets within an issue voucher (IV) have been deemed suitable only for recycling, those retained for sale will be subject to corroboration with Authority internal reports.

2.4 The following information is to be recorded and retained as a minimum requirement:

- 2.4.1 Task Number
- 2.4.2 Date of Tasking
- 2.4.3 Description of the Residual Assets
- 2.4.4 NATO Stock Number (NSN) or Part Number if no NSN available
- 2.4.5 Quantity
- 2.4.6 Reported Condition
- 2.4.7 MOD Issue Voucher number
- 2.4.8 Stock Location at Contractor's Premises (which may be subject to audit checks)
- 2.4.9 Consignor
- 2.4.10 Collection address
- 2.4.11 Sale details (including Customer details).
- 2.4.12 Proof of payment in relation to any HMRC liability.
- 2.4.13 All legal documentation including Waste Transfer Notes and Consignment Notes (where required). These should be issued with each task.
- 2.4.14 Any documentation in law relating to the consignments disposal.
- 2.4.15 Discrepancies against issue Vouchers

2.5 **Monthly reports.** The Contractor shall provide a monthly report to the Authority detailing receipts of Residual Assets and sales completed against tasks issued. The report shall also identify the disposal route adopted, confirming whether the product declared has been re-sold, recycled or disposed of as waste. In addition the Contractor shall provide a monthly stock list detailing all Residual Assets held pending agreed sale or disposal by other means. The Authority currently operates with Microsoft Office 2003 therefore any

excel reports should be saved as Excel 2003 files. Any upgrade in the Authority's software will be advised to the contractor.

2.6. The Contractor shall be required to provide to the Authority, within 4 days following the end of the Accounting period, the suite of reports as detailed at Annex H.

2.7 The Contractor shall provide electronic access to its stock record/sales database on a read only basis.

2.8 **Quarterly Reports.** The Contractor shall provide a quarterly report to the Authority, five days prior to each scheduled progress meeting which shall include:

- 2.8.1 Sales and Marketing Strategy.
- 2.8.2 Discrepancies
- 2.8.3 GRIEF's
- 2.8.4 MoD Pallet (assets) received/returned.
- 2.8.5 Items subject to MGP/MSP which remain unsold after 4 months.

2.9. The Authority is developing an Information System which will enable data to be submitted electronically by both parties, these improvements should reduce the burden on the Contractor. This system will be implemented during the period of this Contract, by way of a Contract Amendment; the Contractor's agreement to such an amendment shall not be unreasonably withheld.

3. **Storage**

3.1. The Contractor shall store the Residual Assets identified as saleable under conditions such that the Residual Assets shall not deteriorate so as to affect their market price.

3.2 Storage facilities where relevant shall meet the requirements to hold material that may be classified, of foreign origin (including USA), hazardous or dangerous.

4. **Preparation for Sale**

5.1 The Contractor may undertake any repair and/or refurbishment that will add value to Residual Assets for sale and thereby increase the return to the Authority. The cost of any such repair and/or refurbishment shall be an allowable deduction in accordance with Condition 10.8.

5. **Stocktaking**

5.1 The Contractor shall conduct the following annual stocktaking programme for Residual Assets held for over 12 months:

STOCK BAND From	To	Contract Check
£0.00	£499.99	0.00%
£500.00	£1999.99	10%
£2000.00	£4999.99	25%

£5000.00	£9999.99	35%
£10000.00	Over	50%

NOTE: Value is that shown on the original MoD Issue Voucher, or as provided by the Authority's representative.

6. **Discrepancy Reporting**

6.1. In the absence of issue documentation, or should the issue documentation prove deficient, the Contractor shall notify the Authority by raising a Discrepancy Report (DR) for discrepancies within 20 days of receipt of any Assets. Any Assets affected should be placed in a separate store and shall not be sold, scrapped or disposed of until appropriate documentation is received. The Contractor shall use the MoD Form F445 at Annex M when raising a DR and await acceptance of the DR by the Authority within a further 5 working days.

6.2. For items valued at less than or equal to £50.00, the Contractor may raised a multi-line DR for missing and incorrect quantities only. This shall be raised in accordance with the procedures at 6.4 to 6.4.3.

6.3. For items valued at more that £50.00, a single-line DR shall be raised in accordance with the procedures at 6.4. to 6.4.3

6.4. The Contractor shall keep records of all Discrepancies by UIN, NSN and quantity and produce a quarterly report regarding discrepancies raised in the previous quarter. When the Contractor raises a DR against a Task/Declaration List, the Contractor should notify the declaring unit or establishment by e-mail, also copying in desdsa-decs@mod.uk.

6.4.1. Where a DR is raised on a Logistic Services main depot Issue Voucher (IV) at Dulmen, Bicester, and Donnington or LS storage outlets at Stirling, Longtown, Westmoors and Ashchurch, the DR should be sent to the following address;

Stock Integrity Dept
Bldg A34
Room 21 Main office
LS Donnington
Telford
Shropshire
TF2 8JT

E-mail: DESLCSLS-LogMACDRTeam@mod.uk
Telephone number: 01952 673017

6.4.2. Where a DR is raised on a main depot Issue Voucher (IV) at DE&S Portsmouth, the DR should be sent to the following address;

DES NBCP
Bldg 3188
Room 8
Old Pipe Shop PP45B
HMNB Portsmouth
Hants
PO1 3LT

E-mail: DESNBCP-COBLOGOPS@mod.uk
Telephone number: 023927 23491

6.4.3. In both instances a copy of the DR should also be sent to desdsa-decs@mod.uk”.

6.5. In the event of a DR being raised, the Contractor must contact the unit to request confirmation of what action should be taken. If the unit fails to respond after a period of two calendar months, the Contractor has the right to take items contained in the DR out of quarantine and place them on charge using a locally produced Receipt Voucher of the actual items received with a copy of the DR attached to it. Where this is known, any Assets taken on charge by the Contractor after the expiry of two calendar months shall include the full NATO Stock Number, or a suitable unique reference number if this is not known. In the event that the Contractor chooses not to take the Assets on charge, the Contractor shall arrange with the Authority to return the Assets at the Authority’s cost, subject to the Authority’s prior approval of such costs.

6.6. For any items taken out of quarantine and placed on charge after the expiration of two calendar months, the Contractor is responsible for maintaining all documentation relating to the quantity and detail of the items as well as an audit trail of all correspondence with the unit.

7. Goods Received In Error

7.1. The Contractor shall Report to the Authority the receipt of any MoD assets not covered by the Contract as detailed at Clause 3.7, and arrange for their collection in accordance with the procedures at Annex F. In such circumstances the Contractor shall be entitled to recover costs reasonably incurred in accordance with Condition 10.3.

8. Hazardous Items Received In Error

8.1. Although the Authority will examine Residual Assets for hazardous material prior to issue, and not knowingly offer such material to the Contractor, no guarantee that Residual Assets are free of such material can be given. The Contractor shall contact the Authority without delay, if hazardous items not identified in the range at Annex E are received.

8.2. In the event that hazardous items are received, the Authority and the Contractor shall agree an appropriate method of disposal, at the Authority’s expense, subject to the Authority’s prior approval of such costs in accordance with Condition 10.3. The Contractor shall use reasonable endeavours to minimise the Authority’s costs by returning these items to declaring establishments by prior agreement with the Authority.

9. Sale of Residual Assets by Public Auction or Tender

9.1. The Contractor shall submit a draft Catalogue or lotting schedule to the Authority at least 7 days prior to any Public Auction or Tender of any Residual Assets identified for disposal by either method. Unless otherwise agreed with the Authority, all such Residual Assets shall be subject to reserve prices which the draft catalogue provided to the Authority shall identify.

9.2. The Authority reserves the right to withdraw items from Auction/Tender sale and/or to exercise its rights under Condition 10.7 in relation to the reserve price and, in that event, shall provide written reasons for doing so. The Authority also reserves the right to attend Auction sales.

10. Marketing And Sale of Materiel from Decommissioned Royal Navy Vessels

10.1. Under the terms of this Annex C, the Authority will allow the Contractor the opportunity to market and sell materiel from such decommissioned Royal Navy vessels as the Authority may from time to time notify to the Contractor and which are considered of interest to Commonwealth and Foreign Governments (CFG) or commercial customers. It does not include scrap ferrous and non-ferrous metals.

10.2. The Authority will inform the Contractor of the availability of such vessels. Should the Contractor choose to market the materiel for sale, a declaration of interest from the Contractor must be submitted in writing within 10 days of notification to the Authority's representatives, as detailed at Box 2 of the DEFFORM 111. No further action shall be taken until approval is received from the Authority's representatives. Once approved, the Contractor shall liaise with the Authority's representatives for access to the materiel and to receive any agreements, caveats or other notifications attached to the sale of the Materiel.

10.3. The Contractor at their own cost will promote the sale of Materiel, organise and pay for removal, transport and all other associated costs. Due consideration will be given to the safety and stability of the vessel. Following clearance of the list of items, which may be marketed in accordance with Condition 10.2 herein, the Contractor will seek authorisation from Disposal and Reserve Ships Organisation (DRSO) before opening shipping routes or removing major items that could affect stability.

10.4. Revenue from the sale of materiel will be subject to the revenue sharing terms of the Contract.

10.5. The Authority retains its right under Condition 5.2.1 to recall materiel up until removal thereof.

KEY PERFORMANCE INDICATORS AND EXPECTED PERFORMANCE TARGET METRIC

Key Performance Indicator 1 – Collections: On receipt on Tasking documentation, contact Customer to arrange time and date for collection of declared products. Unless otherwise agreed, Collection and Removal of Surplus Residual Assets from MoD and non-MoD locations in the UK is to be completed within 10 working days of receiving an authorised request (Task Number).

Performance Target Metric – 95%, to be measured over one month.

Performance Indicator 1a – Special Project Collection Option 1: Collection will be completed 12 days from notification of the pick.

Performance Target Metric – 95%, to be measured over one month.

Performance Indicator 1b - Special Project Collection Option 2: Collection will be completed on or before the last working day of the month.

Performance Target Metric – 95%, to be measured over one month.

Key Performance Indicator 2 – Sales Receipts/Monthly Reports: Return to the authority within 4 working days after the end of each calendar month the Authority's agreed percentage of sale receipts received in that calendar month (the Authority's percentage share). Provide the management information detailed at Annex H to the Contract to the Authority on a monthly basis, to be received by the 4th day of each calendar month.

Performance Target Metric – 100%.

Key Performance Indicator 3 – Goods Received In Error Form (GRIEF): Submit to the Authority all Goods Received in Error Forms (GRIEF), within 14 working days of erroneous receipt of the subject Residual Asset(s).

Performance Target Metric – 90%, to be measured over one month.

Key Performance Indicator 4 – Auction & Tender Lotting: Submit draft lotting schedule/catalogue (annotated with proposed reserve prices) to DSA at least 7 working days prior to any proposed auction or Tender of residual assets.

Performance Target Metric – 100%, to be measured over one month.

EXAMPLES OF RESIDUAL ASSETS COVERED BY THE CONTRACT

Military Aircraft Sub assemblies

Military Aircraft Weapon systems and associated components

Sub assemblies for Land based military systems

Sub assemblies for Land based weapon systems

Weapon systems and associated components for Armoured vehicles

Special to Content equipment containers and equipment Case Wood Packaging

Military Training aids – Simulators

Military Training aids – Dome Trainers

Military Training aids – Drill Trainers

Communication equipment

Communication Equipment spares

Special tools and Test Equipment

Ground & General support Equipment and spares

Sub assemblies for Naval Ships and Vessels

Naval Sonar Equipment

Naval Radar Equipment

Naval Weapons Systems and associated components

Naval Military Training aids – Simulators

Tri Service Equipment subject to ITAR

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PROCEDURE TO BE EMPLOYED WHEN REPORTING ASSETS RECEIVED IN ERROR

1. Should the Contractor receive any Residual Assets not covered by the scope of Contract, they shall, within 14 days of receipt complete a “Goods Received in Error” Form (GRIEF) and submit it to the Authority (Box 2 of Appendix to Contract).

2. Upon receipt of the Form, the Authority shall undertake the following action:-

2.1 For Commodity Based Goods As Defined in Condition 3.7 - The Authority shall place a collection task on the third party Contractor with appropriate responsibilities. A copy of the tasking notice will be sent to the (reporting) Contractor and collection shall be effected within 10 days of such notification. In the event that the collecting Contractor fails to accept the task, or collect, without prior agreement, within the stated period, the Contractor shall be permitted to sell the goods if they so choose.

2.2 For Classified/Weapon Related Goods – The Authority shall contact the relevant Service Provider and seek advice as to whether the Contractor can sell/scrap the goods locally, or whether the Service Provider will arrange collection of the goods. Advice in this respect will be given to the Contractor within 10 days of receipt of the GRIEF by the Authority. If the goods are to be collected by the Services, this will take place within 20 days of notification from the Authority.

2.3 For Hazardous Goods - Hazardous goods shall not be transported without the relevant special conditions being observed, i.e. transfer notes, appropriate containers, and the use of licensed haulers. If the Contractor is in any doubt, they shall contact the Authority.

NOTE: Hazardous Goods are defined as any solid, liquid or gas that can cause harm to humans, other living organisms, or the environment, due to being either radioactive, flammable, explosive, toxic, corrosive, a biohazard, an oxidizer, an asphyxiate, or capable of causing severe allergic reactions.

2.4. For Unauthorised Direct Delivery Goods - See Classified / Weapon Related Goods.

3. Once all actions are completed, the GRIEF shall be considered closed and the master form retained by the Authority. The Contractor (and the Service contact if appropriate) shall be informed of the completion date to be annotated on the copy held by them. The Contractor shall also be required to keep a register of all GRIEFs raised.

4. The Contractor shall provide a report on all GRIEF activity during each Progress Meeting.

GOODS RECEIVED IN ERROR FORM (GRIEF)

To:

From:

1. Serial Number:

2. Reason for submission. Please tick the appropriate box:

a. Goods received of a commodity nature.

☐

b. Classified items e.g. weapon spares.

☐

c. Hazardous Items.

☐

d. Unauthorised direct delivery.

☐

3. Date of receipt/collection and DSA task number if applicable:

.....

4. Originator's UIN and Title:

5. Unit Issue Voucher No:.....

Date:

Item details: (insert overleaf as applicable)

6. Mode of transport used, complete with convoy details (e.g. specialised vehicles, consignment notes, radioactive material transport requirements, Police escort, etc.):

.....

7. Contractor's additional comments:

.....

.....

ITEM DETAILS

NATO Stock Number (NSN)	Short Item Name (SIN)	Quantity	Dimensions and Weight (if applicable)

8. I hereby confirm that the item(s) have been segregated pending your instruction/action.

9. Signed: Date:

10. DSA Action

Signature: Date:

11. SCOC/Unit Action:

Signature: Date:

12. Completion Date.....

GOVERNMENT FURNISHED EQUIPMENT (GFE) (RESIDUAL ASSETS)**- ACCOUNTING FOR GOVERNMENT ISSUED EQUIPMENT**

1. The accounting system used shall be subject to the approval of MoD DIA-AAC, who shall be responsible for agreeing the form of records to be maintained and their subsequent audit.
2. MoD DIA-AAC shall issue formal Asset Accounting Instructions.
3. The Contractor shall undertake an annual stock take of all surplus equipment in their custody, except where prior dispensation has been authorised by MoD Disposal Services Authority or DIA-AAC. A certificate of completion together with details of any identified discrepancies shall be submitted to MoD DIA-AAC on an agreed stocktaking date. MoD DIA-AAC shall provide instructions as to the use of any MoD forms likely to be needed.
4. Essential features to be included in any accounting system shall be:
 - 4.1 The nomination of a Stock Controller responsible to MoD DIA- AAC for the maintenance of the Public Store Account.
 - 4.2 The proper segregation of duties within the Contractor's organisation so as to achieve a form of internal check over the control of Residual Assets.
 - 4.3 Complete, permanent and up-to-date records showing receipts, issues, current balances and the final authorised disposal of residual stocks for all Contract transactions.
 - 4.4 Proper authorisation for each transaction and, where applicable, usage against entitlement.
 - 4.5 Serially numbered vouchers by types with receipt of vouchers, checked at salient points in the system, e.g. on receipt in or issue from stores and on posting to stock records.
 - 4.6 The immediate check and receipting of vouchers against stores received in accordance with Annex C.
 - 4.7 The prompt reporting of discrepancies to the consignor.
 - 4.8 The prompt reporting of all losses of, and damage to, MoD equipment.
 - 4.9 Suitable and secure stores area for Residual Assets, with segregation from commercial stocks and no unauthorised access.
 - 4.10 Full and prompt recording of both scrap arisings and Assets authorised to be scrapped, including formal sales and financial procedures for credit of scrap revenue.

REPORTS**1. Monthly Reports****a) Residual Assets Bought on Charge Report (Goods Received)**

This report shall include as a minimum:

Task Number
Date received
NSN (or part number if NSN cannot be identified)
Description
Quantity

b) Residual Assets Stock Report

This report will identify, at the end of the Accounting Period (calendar month), all the Residual Assets held in stock by the Contractor. This report shall include as a minimum:

Task Number
Date received
NSN (or part number if NSN cannot be identified)
Description
Quantity

c) Residual Assets Sales Report

This report will identify the Residual Assets sold by the contractor during the Accounting Period. This report shall include as a minimum:

(i) Part 1 - Residual Assets Sold

Task Number
When sold (date)
Sold to (customer)
Sold to (country)
Description
NATO Stock Number (or part number if NSN cannot be identified)
Quantity
Nett Amount
VAT Amount
Gross Amount
DSA Net amount
DSA VAT amount (Note – Standard Rate irrelevant of end customer status)
DSA Gross amount
Unit Price
Sales invoice number
Source Location/Site name where originally collected
MoD/OGD
Tender Sale (Y/N)
Tender No (if appropriate)

Minimum Guaranteed Price (Y/N)
Minimum Selling Price (Y/N)
Deductions
Task Closed (Y/N)

(ii) Part 2 - Residual Assets Recycled

Sales Invoice Number
Customer
Date Sold
Task Number
MOD/OGD
Nett Amount
VAT Amount
Gross Amount
DSA Net amount
DSA VAT amount (Note – Standard rate irrelevant of end customer status)
DSA Gross amount

(iii) Part 3 - Residual Assets disposed of as waste.

Task Number
MOD/OGD
Disposal route
Disposal costs

d) Environmental Report

Weight (Kgs/Tonnes) of Collections undertaken within month
Weight (Kgs/Tonnes) of Re-use/Re-sale within month
Weight (Kgs/Tonnes) of Recycling within month
Weight (Kgs/Tonnes) of Waste/Landfill within month

e) Repair/Refurbishment Report

A breakdown of the deduction charges including documentary evidence to demonstrate that the repair/refurbishment carried out has enhanced the return to the Authority.

CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED AT THE INVITATION TO TENDER STAGE

1. Pursuant to Condition 17.4.1, the following information shall be provided:

- 1.1. The total number of individual employees (including any employees of sub-contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their sub-contractors will not transfer;
- 1.2. The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
- 1.3. The preceding 12 months total pay costs - Pay, employee/employer ERNIC and Overtime);
14. Total redundancy liability.

2. In respect of those members of staff included in the total at 1(a) above:

- 2.1. Age (not date of Birth);
- 2.2. Employment Status (i.e. Fixed Term, Casual, Permanent);
- 2.3. Length of current period of continuous employment (in years, months);
- 2.4. Weekly conditioned hours of attendance (gross);
- 2.5. Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
- 2.6. Pension Scheme Membership;
- 2.7. Pension and redundancy liability information;
- 2.8. Annual Salary;
- 2.9. Details of any regular overtime commitments (These may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
- 2.10. Details of attendance patterns that attract enhanced rates of pay or allowances;
- 2.11. Regular/recurring allowances;
- 2.12. Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants).

3. Also required will be any additional information about factors that may influence staffing levels and costs.

4. The information to be provided at paragraphs 1, 2, and 3 should not identify an individual member of staff by name or other unique personal identifier.
5. Access by the Authority or Tenderers to the Contractor's general employment terms and conditions applicable to those members of staff identified at paragraph 2(a).

PERSONNEL INFORMATION TO BE RELEASED ON AWARD OF CONTRACT TO A NEW PROVIDER WHERE TUPE APPLIES

Pursuant to Condition 17.4.2, the following information shall be supplied.

1. Personal, Employment and Career

- 1.1. Employee's full name
- 1.2 Date of birth
- 1.3 Home address
- 1.4 Security Vetting Clearance
- 1.5 Job title
- 1.6 Work location
- 1.7 Conditioned hours of work
- 1.8 Employment Status
- 1.9 Details of training and operating licensing required for Statutory and Health and Safety reasons
- 1.10 Details of training or sponsorship commitments
- 1.11 Standard Annual leave entitlement and current leave year entitlement and record
- 1.12 Annual leave reckonable service date
- 1.13. Details of grievance proceedings where the outcome may have an effect or require action by the new employer.
- 1.14 Information of any active legal proceedings.
- 1.15 Issue of Uniform/Protective Clothing
- 1.16 Working Time Directive opt-out forms
- 1.17 Date from which the latest period of continuous employment began.

2. Superannuation and Pay

- 2.1 Maternity leave or other long-term leave of absence
- 2.2 . Annual salary and rates of pay.

- 2.3 Shifts, unsociable hours or other premium rates of pay
- 2.4 Overtime history for the preceding 12-month period
- 2.5 Allowances and bonuses for the preceding 12-month period
- 2.6 Details of outstanding loan, advances on salary or debts
- 2.7 Bank/building society account details for payroll purposes Tax Code
- 2.8 Cumulative pay for tax and pension purposes
- 2.9 Cumulative tax paid
- 2.10 National Insurance Number
- 2.11 National Insurance contribution rate
- 2.12 Other payments or deductions being made for statutory reasons
- 2.13 Any other voluntary deductions from pay
- 2.14 For pension purposes, the notional reckonable service date
- 2.15. Pensionable pay history for 3 years to date of transfer
- 2.16. Percentage of any pay currently contributed under additional voluntary contribution arrangements
- 2.17. Percentage of pay currently contributed under any added years arrangement.

3. Medical

- 3.1 Sickness and absence records for the immediately preceding four-year period
- 3.2 Details of any active disciplinary cases where corrective action is on going.

4. Disciplinary

- 4.1 Details of any active restoring efficiency case for reasons of performance
- 4.2 Details of any active disciplinary cases where corrective action is on going

5. Due to the Data Protection Act, any additional personal information that it is considered may assist the Contractor to more fully understand the circumstances that affect an individual's employment can only be provided with the positive agreement of the individual member of staff concerned.

6. Examples of the information that might be considered include:

- 6.1 information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995;
- 6.2 short term variations to attendance hours to accommodated a domestic situation; and,
- 6.3 individuals that are TA members, or staff may have been granted special leave for School Governor.

7. Also due to the Data Protection Act, if an individual who was to transfer is subsequently withdrawn and retained, then any information about that individual that has been passed to the new employer under paragraphs 1, 2, 3, 4 and 6 above must be returned to the contractor or the new employer will be required to certify that the information has been as deleted from any of their recording system.

THE ELECTRONIC TRANSACTIONS AGREEMENT

Between

MILITARY SPARES UK LTD

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 Articles and/or Services 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:

Military Spares UK LTD

Secretary of State for Defence

Signature: _____

Signature: _____

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

Whose Registered Office is at:

Whose Address is:

Disposal Services Authority
DE&S Bicester
Bldg H9, H Site
Ploughley Lane
Arncott
Bicester
OX25 1LD

Agreement reference number:



Contents

Electronic Transactions

General Clauses

CLAUSE 1	Definitions
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CLAUSE 4	Authenticity of Messages
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CLAUSE 6	Acknowledgement of Receipt of Messages
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CLAUSE 14	Virus Control
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CLAUSE 16	Entire Agreement
 Annex A	 Message Implementation Guidelines (MIGs) and additional requirements and information applicable to this Agreement

1. Definitions

- a. In this Agreement, in addition to the definitions in DEFCON 501:
- 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 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.

ANNEX A TO DEFFORM 30

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>.

DSA Equipment/Removal/Request/Approval FormSerial: XXXX Dated.....

This form seeks releases of Disposal List Ship Equipment, as listed in Part A below, for commercial sale on behalf of the Disposal Services Authority (Ministry of Defence).

Release is subject to MoD approval, taking into account security clearance as appropriate, capability and full Health and Safety compliance as deemed appropriate by the Disposal and Reserve Ships Organisation (DRSO) at HM Naval Base Portsmouth and confirmation that there is no further MoD requirement for the equipment, The MoD's decision in these regards shall be final.

The Contractor shall be liable for all costs associated with the removal, transport, marketing and sale of material.

Part A – to be completed by the contractor:

SHIP							
LOCATION	EQUIPMENT	NSN	DESCRIPTION	WEIGHT Kg	QTY	REMARKS	Est Market Value

Contractor Point of Contact:

Signed:

Part B: to be completed by DSA

Authorising Contract Number: DSACOMDD/5037

DSA Confirms that the equipment declared above is covered in the authorising contract.

Name:

Signed:

Date:

Part C: From DSA to DRSO:

Providing there is no further MoD requirement for this equipment you are requested to provide access to Disposal List Ship.....on a date to be agreed by DRSO to permit removal of the item(s) listed above, by Removal to be completed by an agreed date (DRSO to contact..... to arrange). If this request is denied then this decision should be notified to the DSA in writing, stating the reason(s).

Name:

Signed:

Date:

Part D: (to be completed by DRSO). Removal of equipment has been completed.

DRSO

Name:

Signed:

Date:

Contractor Performance: (circle one marking)

A = Very Satisfied

B = Satisfied

C = Neither satisfied or dissatisfied

D = Dissatisfied

E = Very Dissatisfied

Mod Form 445 (Revised 7/07)
Electronic Version

Discrepancy Report				Report No:				Reference:						
From:				To:										
Goods received by:				Goods despatched by: (if different from above)										
Invoice or A&I Note No		RV No and Date		Contract or LPO No				Demand Order or Warrant No.						
Section 1 - Transport details														
a: Carrier				b: Type of Transport (✓ one box only)										
				Road <input type="checkbox"/>										
				Rail <input type="checkbox"/>										
				Container <input type="checkbox"/>										
				Air <input type="checkbox"/>										
				Post <input type="checkbox"/>										
				Sea <input type="checkbox"/> If so, enter Name of Vessel <input type="text"/>										
				Name of Vessel <input type="text"/>										
Convoy/Carrier Note No		Wagon/Container/Vehicle No		Wagon/Container Seal No				Bill of Lading /Air Waybill No		Freight Shipment Order No				
Section 2 - Details of Discrepancy														
a: Reason for Discrepancy (give Overleaf any other information to show reason for discrepancy)														
(✓ one box only)		Packaging:		<input type="checkbox"/>		Loss/Damage in Transit		<input type="checkbox"/>		Faulty Selection				
b: Relevant Information														
Date Stores Received				Date Stores Unpacked										
Packing Loading List No				Daily Receipt Sheet No										
Notification No. to Carrier				Notification to Carrier Date										
Package No's:														
Only to be completed if applicable to stores in question:														
Number Packages Invoiced				Weight Packages Invoiced										
Number Packages Received				Weight Packages Received										
Package Defect Report:		Number				Date								
Were the wagon / container seals intact	Yes	<input type="checkbox"/>	Where the packages intact on receipt	Yes	<input type="checkbox"/>	Were contents of broken packages checked on receipt	Yes	<input type="checkbox"/>	Was a check made in front of carriers representative	Yes	<input type="checkbox"/>	Was carriers note endorsed to show damage / discrepancy	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>		No	<input type="checkbox"/>		No	<input type="checkbox"/>		No	<input type="checkbox"/>		No	<input type="checkbox"/>

Mod Stock Reference:		Quantities							
As Invoiced	As Received (if different)	Short Item (by Name)	D of Q	Invoiced			Received		
				Serv	Rep	Scrap	Serv	Rep	Scrap

Section 2 - Continued**c. Remarks by Unit Receiving Goods (Consignee)**

Signed		Date	
		Telephone Number	
Rank		Extension Number	

Section 3 - Statement

Statement by: (✓ one box only)	a. Unit Despatching Goods (Consignor)	<input type="checkbox"/>	b. Result of Investigation	<input type="checkbox"/>	c. Report by Inspectorate	<input type="checkbox"/>
Signed			Date			
Telephone Number						
Rank			Extension Number			

Government-to-Government Sale of Residual Assets

1. In the event that Residual Assets already declared to the Contractor are subsequently identified by the Authority as being of interest to foreign Governments the Contractor will assist and support the Authority to promote such interest and facilitate a Government-to-Government sale, where this is likely to achieve greater value for money than a commercial sale, to the benefit of the Authority and the Contractor.
2. The Authority (through the DSA Commercial Disposals, Commercial team) shall notify the Contractor in writing to identify any Residual Assets that may be the subject of a potential Government-to-Government sale and shall provide evidence of a commitment from the identified customer to purchase the said Residual Assets. On receipt of such notification and evidence the Contractor shall place the Residual Assets into quarantine and shall suspend sales and marketing activities on its own behalf for a set period of time, to be agreed between the Authority and the Contractor.
3. The target price to be achieved from a Government-to-Government sale, charges for the storage of the Residual Assets (where applicable), the period for which the Residual Assets will be placed into quarantine and any revision to the percentage of net selling price payable to MoD at Schedule 2 (the Authority's percentage share) will be agreed in writing between the Authority and the Contractor prior to any Residual Assets being placed into quarantine.
4. All costs incurred by the Contractor in relation to the storage, repair, refurbishment and any other services will be reimbursed to the Contractor by the Authority. This would be achieved by an addition of these costs to the sale price to the customer, or through a deduction in the Authority's share of the return from the Contractor's eventual sale price, should the Government-to-Government sale not take place.
5. Should the actual price achieved from the sale vary by more than 10% of the target price in either direction, the Authority and Contractor may enter into negotiations regarding a further revision to the percentage of net selling price payable to MoD.
6. All communications between the Contractor and the Authority in relation to Government to Government sales of Residual Assets must be conducted through the DSA Commercial Sales team. Any communications received by the Contractor from any other Authority representative should immediately be passed to a Commercial team member as detailed Box 1 of the DEFFORM 111.



Senior Commerical Manager, Commercial Disposals
Defence Equipment and Support
Disposal Services Authority
Building H9, H Site
Ploughley Lane, Arncott
Bicester OX25 1LD

Tel: 03067 702861
Email: DESLCSLS-DSA-Comrcl-3@mod.uk



For the personal attention of:

Your Reference:

Our Reference:

Dear Sir or Madam

CONTRACT NO DSA COMDD/5037 – Contract for the Disposal of Surplus Equipment Spares and Material for Military Platforms

1. On behalf of the Secretary of State for Defence. I hereby give you notice that the following aspects are designated 'SECRET Matter' for the purpose of Clause 1a of DEFCON 659- Security Measures included in the above contract:

2. The actual protective marking for the equipment will be as individually instructed by the Authority at the point of release of the equipment on the Declaration Form, however, the protective marking for the equipment is only expected to range from 'NOT PROTECTIVELY MARKED' to 'OFFICIAL'.

ASPECTS

EQUIPMENT
Tri-Service equipment subject to ITAR
Military Aircraft Sub assemblies
Military Aircraft Weapon systems and associated components
Sub assemblies for Land based military systems
Sub assemblies for Land based weapon systems
Weapon systems and associated components for Armoured vehicles
Military Training aids - Simulators
Military Training aids – Dome Trainers
Military Training aids – Drill Trainers
Communication equipment
Communication Equipment spares
Special tools and Test Equipment
Ground & General support Equipment and spares
Sub assemblies for Naval Ships and Vessels
Naval Sonar Equipment
Naval Radar Equipment
Naval Weapons Systems and associated components
Naval Military Training aids – Simulators

3. Will you please confirm that:

- a. The aspects of the SECRET Matter of the above contract has been brought to the attention of the person directly responsible for the security of this contract.
- b. The definition is understood.
- c. You have access to the Security Policy Framework and other security requirements/measures provided on the DE&S DHSY/PSyA restricted access website and that measures can, and will be taken to safeguard the SECRET Matter.

4. If you have any difficulty either in interpreting the definition of the SECRET Matter or in safeguarding it, will you please let me know immediately, and send a copy of your letter to your DE&S DHSY/PSyA Security Adviser.

5. Any access to information on MoD premises that may be needed will be in accordance with MoD security regulations under the direction of the MoD Project Officer.

Yours faithfully

DES LCS LS-DSA-Comrcl-3

Distribution:

Action:

TBC (Contractor)

Copy:

DES LCS LS-DSA-Comrcl-3a
DES Infra-Sy-PolicySBCAC Mgr
DES Infra-Sy-Policy-People
DBR-DefSy-STInd
DES DSA-CD2

APPROVALS

POSITION	NAME	SIGNATURE	DATE
Contractor	TBC		
DSA Commercial Officer			
DSA Project Officer			

Appendix - Addresses and Other Information

1. Commercial Officer

Mrs Denise Binder
DSA Commercial 3
DE&S
Building 9, H Site
Lower Arncliffe,
Bicester OX25 2LD

Email: DESLCSLS-DSA-Comrc1-3@mod.uk

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to
DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate,
Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4
Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394

2. Project Manager, Equipment Support Manager or PT Leader (from whom technical information is available)

DSA Commercial disposals 2
DE&S
Building 9, H Site
Lower Arncliffe,
Bicester OX25 2LD
Email: DESDSA-Cd2@mod.uk

9. Consignment Instructions

The items are to be consigned as follows:

3 Packaging Design Authority

(Where no address is shown please contact the Project Team in Box 2)

4. (a) Supply/Support Management Branch or Order Manager:

Tel No:
(b) U.I.N.

10. Transport. The appropriate Ministry of Defence Transport Offices are:

5. Drawings/Specifications are available from

11. The Invoice Paying Authority (see Note 1)

Ministry of Defence ☎ 0151-242-2000
DBS Finance
Walker House, Exchange Flags Fax: 0151-242-2809
Liverpool, L2 3YL
Website is:
<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to

(where no address is shown the mauve copy should be destroyed)

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management
PO Box 2, Building C16, C Site
Lower Arncliffe
Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)
Applications via fax or email: [DESLCSLS-
OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk)

7. Quality Assurance Representative:

Commercial staff are reminded that all Quality Assurance requirements
should be listed under the General Contract Conditions.

AQAPS and DEF STANS are available from UK Defence
Standardization, for access to the documents and details of the
helpdesk visit <http://dstan.uwh.dii.f.r.mil.uk/> [intranet] or
<https://www.dstan.mod.uk/> [extranet, registration needed].

NOTES

1. **Forms.** Hard copies, including MOD Form 640 are available from
address in Box 12., All other invoicing forms e.g. AG Forms 169 and
173, are available from the website address shown at Box 11.

2.* Many DEFCONs and DEFFORMs can be obtained from the
MOD Internet Site:
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

For Official Use Only Recoverable YES ☐ NO ☐

Issue of Government Property YES ☐ NO ☐

VAT Contractor - Country of Origin (delete those not
applicable)

UK

Overseas (non-EC
Country)

Overseas (EC Country)

If EC specify country:

Outside the scope

Exempt

Taxable Zero Rate

Taxable - Standard Rate

☐
☐
☐
☐

Item Nos

Item Nos

Item Nos

Item Nos

Finance Branch

RAC / LPC No /
Project No

Requisition No

Project
Management/
Production branch
reference

Place of
manufacture

Place of packaging

Contractor's Tel No

(where a contract is with an overseas contractor JSP 916 should be consulted)

