



# Ministry of Defence

## HOCS Team

**Contract No: HOCS1a/00009**

**For:**

## **External Support: Risk, Internal Control and Assurance Functions for the Director Audit, Risk and Assurance (DARA)**

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

**Team Name and address:**

Def Comrcl CC – HOCS 3  
Kentigern House  
65 Brown Street, Glasgow  
G2 8EX

**E-mail Address:** [REDACTED]

**Telephone Number:** [REDACTED]

**And**

**Contractor Name and address:**

PriceWaterhouseCoopers (PWC) LLP  
1 Embankment Place  
London  
WC2N 6RH

**E-mail Address:** [REDACTED]

**Telephone Number:** [REDACTED]

## General Information

This contract, HOCS1a/00009 for the External Support: Risk, Internal Control and Assurance Functions for the DARA is made on 9 November 2015, the date of the agreed DEFFORM 10b,

BETWEEN

1. **Her Britannic Majesty's Secretary of State for Defence**, acting by Defence Commercial CC – HOCS3, Ministry of Defence, [REDACTED], Kentigern House, 65 Brown Street, Glasgow, G2 8EX (the Authority),

AND

2. **PriceWaterhouseCoopers (PWC) LLP, 1 Embankment Place, London, WC2N 6RH** (the Contractor).

Whereas the Authority wishes the Contractor to provide services to the Authority and has agreed with the Contractor the terms and conditions upon which those services will be provided by the Contractor.

3. The Contractor shall provide the services described in the Statement of Requirement (Schedule 2) in accordance with the conditions of Contract specified at Schedule 3 and the Firm Price man day rates detailed at Schedule 1, exclusive of VAT but inclusive of travel and subsistence cost.
4. The duration of this contract is from **9 NOVEMBER 2015 until 8 NOVEMBER 2018**, with the option to extend for a further two years at the Authority's discretion.
5. The work shall be performed at mutually agreed (between MoD and the Contractor) location/premises as instructed by the Designated Officer.
6. In connection with the above, travel and subsistence expenses necessarily and properly incurred out with the main base, with the prior approval of the Designated Officer, shall be reimbursed in line with the provisions outlined at Schedule 1.
7. Except where there is prior written approval from the Commercial Branch, payment will not be made for work performed which is deemed outside the scope or period of the Contract.
8. The following schedules form part of the Contract:

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***Schedule 1***

***Pricing Schedule***

***HOCS1a/00009***

### Pricing Schedule

#### Part A: Enterprise Risk Management and Internal Control and Assurance Framework

| Grade               | Year 1<br>11/2015 to<br>10/2016 | Year 2<br>11/2016 to<br>10/2017 | Year 3<br>11/2017 to<br>10/2018 | Option Year 4<br>11/2018 to<br>10/2019 | Option Year 5<br>11/2019 to<br>10/2020 |
|---------------------|---------------------------------|---------------------------------|---------------------------------|--|--|
| Partner             | █                               | █                               | █                               | █                                      | █                                      |
| Director            | █                               | █                               | █                               | █                                      | █                                      |
| Managing Consultant | █                               | █                               | █                               | █                                      | █                                      |
| Senior Consultant   | █                               | █                               | █                               | █                                      | █                                      |
| Consultant          | █                               | █                               | █                               | █                                      | █                                      |

#### Part B: Fraud Defence

| Grade               | Year 1<br>11/2015 to<br>10/2016 | Year 2<br>11/2016 to<br>10/2017 | Year 3<br>11/2017 to<br>10/2018 | Option Year 4<br>11/2018 to<br>10/2019 | Option Year 5<br>11/2019 to<br>10/2020 |
|---------------------|---------------------------------|---------------------------------|---------------------------------|--|--|
| Partner             | █                               | █                               | █                               | █                                      | █                                      |
| Director            | █                               | █                               | █                               | █                                      | █                                      |
| Managing Consultant | █                               | █                               | █                               | █                                      | █                                      |
| Senior Consultant   | █                               | █                               | █                               | █                                      | █                                      |
| Consultant          | █                               | █                               | █                               | █                                      | █                                      |

**NOTE:**

The expected workload is to be conducted on the following grade split:

| Grade               | Percentage % |
|---------------------|--------------|
| Partner             | 10           |
| Director            | 10           |
| Managing Consultant | 35           |
| Senior Consultant   | 35           |
| Consultant          | 10           |

Any deviation from this will require the specific approval of the DARA Director

**Annex A****T&S Expenses – For ALL Grades required in support of the requirement****Travel & Subsistence**

- A. **Base Location** The individual detailed Task Statements of Requirement will identify the base locations and travel to all other locations will be subject to travel and subsistence claims which will be subject to prior approval by the Authorities Designated Officer. Travel and Subsistence claims will not be paid in respect of work at, or visits to, places 5 miles or less from the Contractor's normal place of work. Any main base stated in a Task in this contract, will be deemed as the Contractor's normal place of work for that Task.
- B. **Prior Approval** The Contractor shall obtain written approval from their Designated Officer identified in the associated Task Statement of Requirement a copy of the approval shall be provided with the subsequent T&S claim summary as detailed in the payment condition. In addition, any subsequent variation to the approved travel request shall be agreed by repetition of the procedure above.
- C. **Minimise Expenditure** Every effort should be made to reduce the need to travel, consider the most sustainable method of travel and where sensible use alternatives to travelling. Where Video Conferencing Facilities exist, any request to travel should demonstrate why the facilities are not being utilised.
- D. **Claims** The Contractor shall submit claims for payment via P2P for T&S costs incurred. Claims for each Task shall be submitted monthly following receipt and verification by the relevant Designated Officer of a monthly breakdown summary sheet detailing the T&S being claimed (supported by copies of authorised approval and receipts in sequential date order, with reference numbers that match the summary sheet).
- E. **Rates** All Rail Travel should be Standard class. All Air Travel should be conducted at economy class. It should be noted, however, that where travel can be arranged, using RAF or BAES flights it is a requirement that these flights be used. This decision will be taken by the Designated Officer and will be binding. Where it is necessary to travel by commercial airlines in pursuit of the Contract, the Contractor should use any benefits (e.g. "Air Miles"), if possible, to offset the costs of further travel taken on behalf of the Authority. Air and Rail Travel will be reimbursed at cost on production of appropriate evidence, e.g., ticket or receipt plus pre approval (see Claims process).
- F. Car journeys using Contractor's own vehicles will be paid at the rate of [REDACTED], based on estimate produced by the Claimant and authorised in advance by the Designated Officer for that Task. The request for approval should verify the number of miles to be travelled and that the claim relates solely to travel in connection with the performance of the Contract. Claims relating to vehicle insurance or maintenance are inadmissible.
- G. Where the Designated Officer agrees that it is in the public interest, the Contractor may, with prior approval, arrange for short-term self-drive car hire for a particular official journey or journeys relating specifically to the performance of the Contract. All reasonable vouchered hiring and running costs incurred by the Contractor while using the vehicle on that journey will be met following the Claim process above.
- H. Where an overnight stay away from the work base is required subsistence will be paid up to a maximum of [REDACTED] per night for accommodation and breakfast. The Contractor may claim up to a maximum of [REDACTED] for dinner when associated with an overnight stay and/or [REDACTED] when

working away from the work base. The Contractor must submit evidence of the expenditure incurred, following the Prior Approval and Claim processes above.

- I. Where the Designated Officer agrees that it is in the public interest, the Contractor may, with prior approval and authorisation, arrange for taxi transfers between hotel and airport, or hotel and work location. These will be reimbursed at cost using following the Claim process above.
- J. Sundries i.e. coffees and newspapers are not allowable.
- K. Breakfasts not associated with an overnight stay are not allowable.
- L. All rates quoted for Travel and Subsistence will continue without change for the term of the Contract.
- M. VAT Travel and Subsistence claims do not attract VAT (VAT paid at source) therefore such claims must be processed accordingly.

***Schedule 2***

***Statement of Requirement***

***HOCS1a/00009***

## **Statement of Requirement for the External Support: Risk, Internal Control and Assurance Functions for Director Audit & Risk Assurance (DARA)**

### **1. Introduction**

This specification sets out the requirements for the provision of external support to the Director Audit Risk & Assurance (DARA) in the development and implementation of an MOD wide Enterprise Risk Management (ERM) and Internal Control and Assurance Framework (ICAF).

The ICAF will underpin the Defence Operating Model and provide reliable information on the assurance over the management of strategic and operational risks and MOD's stewardship. It will also provide the evidence base for the annual assurance reporting process and ultimately the Department's Annual Governance Statement (AGS).

### **2. Background to the requirement**

PUS is the Departmental Accounting Officer, personally accountable to Parliament for the economic, efficient and effective use of resources, prudent administration and the regularity and propriety of MOD's spending.

PUS must sign an AGS, which is presented as part of the accounts. It is a high-level summary of the ways in which risk has been identified, evaluated, managed and controlled. It also confirms that the effectiveness of the system of internal control has been reviewed and that the results have been discussed with the Defence Board and the Defence Audit Committee.

The MOD wide ERM and ICAF is essential to provide sufficient and reliable information on the assurance over organisational stewardship and the management of MOD's risks. As the ICAF intended to be live and constantly reviewed, it will feed into the AGS, increasing the efficiency and effectiveness of the annual assurance reporting process.

Key benefits of operating a ICAF include, but are not limited to:

- Ability to confidently discharge responsibilities given under 'Managing Public Money';
- Clear line of sight in respect of accountabilities and decision making providing an evidence risk based Holding to Account process;
- Ability to adapt to changes in the business and operational environments;
- Timely information on the effectiveness of risk management;
- Clear understanding of required assurance, where it comes from and where gaps/duplication/redundancy exists, providing an opportunity to take remedial action;
- Reduced likelihood of surprises;
- Transparency and understanding of risk and control maturity across the Department;
- Critical supporting evidence for the production of the AGS; and
- Effective deployment of resource related to risk, control and assurance.

The DARA is currently recruiting to a new specialist risk management and controls assurance in-house team. The team of [REDACTED] will be based primarily in [REDACTED]. Their main objective is to take forward the implementation of the ERM and ICAF and support management in the implementation and operation of effective controls over Departmental risks.

The team's vision is to "implement a high quality risk, control and assurance framework that supports the delivery of MOD objectives using resources efficiently and effectively."

The authority has given approval for the DARA to form a strategic partnership with a third party to provide external support over, initially, a 3 year period with the option to extend for a further two years. Part of the arrangements will be that there is transfer of knowledge and skills to the DARA's team.

**3. Scope**

External Support is required to implement the ERM and ICAF across the Department, as well as providing support to the DARA with continuous improvement of the annual assurance reporting process.

Technical support will also be required to help the in-house Risk and Controls Assurance team further develop its supporting tools, techniques and management processes.

The scope of the ERM and ICAF covers the Department's Defence Authorities as well as the MOD entities:

| Defence Authorities  | MOD entities  |
|--|---|
| <ul style="list-style-type: none"> <li>• Public &amp; Parliamentary Accountability</li> <li>• Healthcare &amp; Medical</li> <li>• People</li> <li>• Capability Coherence</li> <li>• Corporate Design</li> <li>• Communications</li> <li>• Statistics</li> <li>• Commercial</li> <li>• Business Resilience</li> <li>• Security</li> <li>• Cyber and C4ISR</li> <li>• Financial Management &amp; Approvals</li> <li>• Technical and Quality Assurance</li> <li>• Logistics</li> <li>• Health, Safety and Environmental Protection</li> <li>• Information</li> <li>• Operations</li> <li>• Acquisition Systems</li> </ul> | <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 120px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 140px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 60px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 220px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 320px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 310px; height: 15px; margin-bottom: 5px;"></div> |

The DARA will lead on this contract in conjunction with the 1\* Head of Risk & Assurance commissioning work directly from the external provider.

**4. Specifying Services**

Part A (Lot 1)

The DARA requires external support to assist in the implementation of an Risk Management (ERM) and Internal Control and Assurance Framework (ICAF) across the MOD entities.

Enterprise Risk Management (ERM)

Significant has gone into developing an ERM in the last four months. Assistance is required in the implementation of the ERM at TLBs and DA along with a training package. Assistance is also required in:

- running risk workshops
- helping management in devising appropriate risk mitigations strategies
- embedding risk management in business processes

- reviewing and improving the quality of risk information
- process of collation of information and assist in development of MOD wide risk landscape
- preparing Board risk information
- continuous improvement in risk management
- selection and implementation of software tool

#### Internal Control and Assurance Framework (ICAF)

A fully functional, embedded integrated ICAF is likely to take up to three to four years to achieve. Our intention is develop ICAF from the Defence Authorities first followed by the TLBS. A risk based approach will be taken selecting the order for DA. It has already been agreed that the ICAF will first be implemented for Finance, to be complete by the end of March 2016. Assistance is required in the development of ICAF for the DA and TLBs and in particular:

- subject matter specialists (for example Commercial) who can assist in the identification of keys risks
- control experts who will bring with knowledge of good practice controls for the each subject matter
- assurance experts to devise assurance strategies
- assist in the development of integrated risk, control and assurance framework

#### Part B (Lot 2)

##### Fraud Defence

The DARA also has responsibility for the Defence Fraud team. The strategic partner may also be asked to provide assistance:

- undertake fraud risk assessments
- undertake investigations
- assist in the development of data analytics capability

Support to Fraud Defence is not expected to be a significant part of the services (we envisage no more than 10-20% of the contract value).

The Contractor's staff will comply with the processes and procedures set out by the DARA.

In providing the service, the Contractor is expected to:

- provide a professional service that is consistent with, and seeks to promote, the reputation and position of the DARA in terms of impact on senior management within the Department.
- present itself as an integrated member of the in-house team;
- use appropriate methods and technologies, and deploy genuine sector and solution specialists; and
- keep the DARA and 1\* Head of Risk & Assurance informed of progress and issues arising.



## **5. Quality Assurance Requirements**

### Physical and Information Security

MOD take both physical and information security extremely seriously, and require the Contractor to comply with all relevant security policies in operation.

### Records Management

All documentation and other evidence remain the property of the Department, and must be prepared in accordance with the relevant records management policy. This includes use of designated Departmental records management systems as appropriate.

The Contractor must not remove any Departmental records, information or data from its sites or IT network (unless temporarily agreed as part of a deployment from one Departmental site to another).

### Other Policies

The Contractor and its staff will be required to follow all policies and procedures that are deemed applicable to contractor staff working in individual organisations and buildings (for example, fire regulations, health & safety, clear desk policies, acceptable use of IT etc). Where there is any doubt as to whether a policy is applicable, this should be raised with the Contract Manager at the earliest opportunity for clarification.

## **6. Management and Contract Administration**

The DARA will be responsible for the overall contract between the Contractor and the Department, and will act as the Contract Manager.

### Contract Monitoring and Reporting

The Contractor will be required to develop robust reporting mechanisms to provide the Contract Manager with quarterly information on the contractor's performance under this contract including:

- Availability of suitably qualified and experienced staff to undertake agreed tasks;
- Continuity of staff identified as core to the contract;
- On-going quality and high performance by the Contractor's staff;
- Percentage of tasks started and completed on agreed dates;
- Percentage of tasks completed within agreed person days;
- Other measures offered by the contractor; and
- Other measured as may be reasonably requested by the Department

## **7. Training / Skills / Knowledge Transfer**

The Department wishes to deliver their strategic vision of developing skills and bringing on talent, so that the DARA's team is seen to be a place to build exciting careers, with significant opportunities for career development.

An objective of the external support arrangement is to share tools and combine the skills, knowledge and expertise of the MOD's in-house team with those of the Contractor to deliver a modern risk management and controls assurance service to MOD, driving forward an enhanced quality of corporate governance and supporting embedded risk management and internal controls.

In addition, whilst recognising the inviolate principle of confidentiality to their clients, the contractor is required to share industry developments, issues, trends, benchmarks and good practice across a range of the contractor's clients without compromising individual client anonymity in order to:

- assist the MOD to strengthen its governance arrangements and assurance frameworks; and
- contribute to the development of the in-house function, whether through formal training or knowledge transfer.

### Hosting

All contractor staff that provide support to the contract within MOD premises must hold a [REDACTED]

Contractor staff, who are approved to work on the contract and meet the relevant security requirements, will be provided with hot-desk space, and access to appropriate IT networks (including an email account).

***Schedule 3***

***Conditions of Contract***

***HOCS1a/00009***

## Annex A

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## **MOD Conditions for the Provision of Services:**

### **Contract No: HOCS1a/00009**

#### **A General Contract Provisions**

##### **A1. Interpretation**

- a. The defined terms in the Contract shall be as set out in Annex 1.
- b. Unless the context otherwise requires:
  - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
  - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
  - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
  - (7) Unless excluded within the terms of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

##### **A2. Amendments to Contract**

- a. All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not Minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2.a above has been issued.

##### **A3. Variations to Specification**

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition A2 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.

- b. Any variations that cause a change to:
- (1) fit, form, function or characteristics of the Contractor Deliverables;
  - (2) the cost;
  - (3) Delivery Dates;
  - (4) the period required for the production or completion; or
  - (5) other work caused by the alteration,

shall be the subject to condition A2 (Amendments to Contract). Each amendment under condition A2 shall be classed as a formal change.

#### **A4. Precedence**

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
- (1) Sections A - H (and J - L, if sections J - L are included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
  - (2) Schedule 2 (Schedule of Requirements) and, where included, Schedule 8 (Acceptance Procedure);
  - (3) the remaining Schedules; and
  - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause A4.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause A4.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition A21 (Dispute Resolution).

#### **A5. Severability**

If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

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

#### **A6. Assignment of Contract**

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

**A7. Waiver**

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

**A8. Third Party Rights**

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

**A9. Governing Law**

- a. Subject to clause A9.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause A9.d and A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause A.9.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause A9.a, A9.b and A9.c shall be amended to read:

- a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
- b. Subject to clause A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."

(2) Clause A21.b shall be amended to read:

"In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the

tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this clause A9 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

## **A10. Entire Agreement**

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

## **A11. Disclosure of Information**

- a. Subject to clauses A11.d, A11.e, A11.h and A14 each Party:
  - (1) shall treat in confidence all Information it receives from the other;
  - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
  - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
  - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
  - (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
  - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

- c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses A11.a and A11.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses A11.a and A11.b shall not apply to any Information to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
  - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
  - (3) can show:
    - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
    - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
    - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
    - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;provided that the relationship to any other Information is not revealed.
- e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.
- f. The Authority may disclose the Information:
- (1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
  - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;
  - (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
  - (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

- g. Before sharing any Information in accordance with sub-clause A11.f above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

### ***A12. Publicity and Communications with the Media***

The Contractor shall not, and shall ensure that any employee or Subcontractor shall not, communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

### ***A13. Protection of Personal Data***

In the performance of the Contract, both Parties shall comply with their obligations as a data controller, as defined in the Data Protection Act 1998.

### ***A14. Transparency***

- a. Subject to clause A14.b but notwithstanding condition A11, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with clause A14.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 6 (Contractor's Commercially Sensitive Information).
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A14.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this condition A14 shall affect the Contractor's rights at law.

### **A15. Equality**

- a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- b. Without prejudice to the generality of the obligation in clause A15.a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent Legislation in the country where the Contract is being performed.
- c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this condition A15 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.
- d. The Contractor agrees to take reasonable efforts to reflect this condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

### **A16. Child Labour and Employment Law**

- a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

### **A17. Subcontracting**

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.
- b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.
- c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:
  - (1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and
  - (2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.
- d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience in the event that the Authority exercises its right to terminate this Contract under Condition A22 (Termination for Convenience), with twenty (20) Business Days' notice (or such other notice period as the Authority shall give under this Contract).
- e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is

British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX  
(Telephone : 01204 880733) or <http://business.base-uk.org/procurement>.

- f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by clause D1.a (Third Party Intellectual Property – Rights and Restrictions). On receipt of any such notification the Authority shall issue a written authorisation to the Subcontractor in accordance with clause D1.g. Any such authorisation shall always be subject to clauses D1.j, D1.k and D1.n as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in any such claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.
- g. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in the relevant parts of SC3 Schedule "Export Licence". Where it is not practicable to include the terms set out in SC3 Schedule "Export Licence", the Contractor shall report that fact and the circumstances to the Authority.

### **A18. Change of Control of Contractor**

- a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol BS34 8JH as soon as practicable of any intended, planned or actual change of Control. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.
- b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.
- c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority's concerns to the Authority's satisfaction in accordance with clause A18.a, or has failed to supply or withheld the Information required under clause A18.a.
- d. If the Authority exercises its right to terminate in accordance with clause F1.a.(4) the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this clause A18.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

### **A19. Termination for Insolvency or Corrupt Gifts**

The Authority may terminate the Contract with immediate effect, without compensation, by giving written Notice to the Contractor at any time after any of the following events:

#### **Insolvency:**

- a. where the Contractor is an individual:

- (1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the "IA 86") or the court making an interim order pursuant to Section 253 of the IA 86;
  - (2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;
  - (3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the "DAAS Act") is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;
  - (4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
  - (5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
  - (6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:
    - (a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;
    - (b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;
    - (c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or
    - (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
  - (7) any analogous procedure or step is taken in any jurisdiction;
- b. where the Contractor is a firm:
- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under schedule A1 of IA 86 in respect of the Contractor;
  - (2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;
  - (3) any event listed in clause A19.a occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor;
  - (4) any event listed in clause A19.c occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;

- (5) an event listed in clause A19.e in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;
  - (6) any event listed in this clause A19.b occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;
  - (7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
  - (8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
  - (9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;
  - (10) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:
    - (a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
    - (b) it is unable to pay its debts in terms of section 221 of IA 86; or
  - (11) any analogous procedure or step is taken in any jurisdiction;
- c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:
- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under schedule A1 of IA 86;
  - (2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;
  - (3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
  - (4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
  - (5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;
  - (6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall

regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or

- (7) any analogous procedure or step is taken in any jurisdiction;
- d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

#### **Corrupt Gifts**

- f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees):
  - (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
    - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or
    - (b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
  - (2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;
  - (3) has entered into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- g. In exercising its rights or remedies to terminate the Contract under A19 f. the Authority shall:
  - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
  - (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
    - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
    - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.
- h. Where the Contract has been terminated under clause A19 f. of this Condition, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor

any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

## **A20. Consequences of Termination**

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

## **A21. Dispute Resolution**

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

## **A22. Termination for Convenience**

- a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.
- b. In the event that the Authority exercises its rights in accordance with clause A22.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.
- c. The Authority's total liability under clause A22.b shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

## **A23. Contractor's Records**

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition A11 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years from:

- (1) the end of the Contract term;
- (2) termination of the Contract; or
- (3) the final payment,

whichever occurs latest.

## **A24. Duration of Contract**

This Contract comes into effect on the 9 November 2015 and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

## **A25. Contractor's Warranties**

a. The Contractor warrants and represents, that:

- (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
- (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
- (3) from the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- (4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

## **B The Contractor Deliverables**

### **B1. Supply of Contractor Deliverables and Quality Assurance**

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
  - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables;
  - (2) comply with all applicable Legislation; and
  - (3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause B1.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
  - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
  - (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
  - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

## **B2. Environmental Requirements**

The Contractor shall in all its operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

## **B3. Disruption**

- a. The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- b. The Contractor shall inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and certainly no later than seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.
- c. The Contractor shall have robust contingency plans in place to ensure that, in the event of industrial action by the Contractor's Team, provision of the Contractor Deliverables is maintained and such contingency plans shall be available for the Authority to inspect and / or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the contract period.

## **C Price**

### **C1. Contract Price**

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to condition G2 the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

## **D Intellectual Property**

### **D1. Third Party Intellectual Property – Rights and Restrictions**

- a. The Contractor shall promptly notify the Authority as soon as they become aware of:
  - (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
  - (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything Delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;
  - (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause D1.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a commercial off the shelf (COTS) item or service.

- b. If the Information required under clause D1.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.
- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This clause shall not apply if:
  - (1) the Authority has made or makes an admission of any sort relevant to such question;
  - (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
  - (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
  - (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause D1.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause D.1a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
  - (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
    - in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

- h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
- (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
  - (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause D1.a.
- k. Where authorisation is given by the Authority under clause D1.e, D1.f or D1.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
- (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
  - (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
  - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
  - (3) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

- (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
- (1) Clauses D1.a – D.1.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
  - (2) Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
  - (3) A Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
  - (4) The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
  - (5) Following a notification under clause D1.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
  - (6) The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in condition D1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

## **E Facilities And Assets**

### ***E1. Access to Contractor's Premises***

The Contractor shall provide to the Authority's Representatives following reasonable notice, relevant accommodation / facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.

## **F Delivery**

### ***F1. Authority's Remedies for Breach of Contract***

a.If the Contractor:

- (1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant date specified in Schedule of Requirements and / or the Specification;
- (2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;
- (3) supplies Contractor Deliverables that do not comply with clause B1.b;
- (4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with condition A18, or fails to supply or withholds the Information required under clause A18.a;
- (5) commits a persistent failure by failing to meet either:
  - (a) a single Key Performance Indicator (KPI) on [ INSERT NUMBER] or more occasions in a rolling [ INSERT NUMBER] month period; or
  - (b) [ INSERT NUMBER] or more KPIs on a rolling [ INSERT NUMBER] month period,

where this Contract includes Core+ condition "Key Performance Indicators and Performance Management"; or

- (6) otherwise commits a material breach of its obligations under the Contract,

the Authority shall have the right to exercise one or more of the following remedies:

- (7) where the Contractor commits a persistent failure in accordance with clause F1.a.(5) or where the breach is material in accordance with clause F1.a.(6), to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;
  - (8) refuse to accept the provision of any further Contractor Deliverables by the Contractor and the Contractor shall refund to the Authority any sums paid in respect of the Contractor Deliverables that fail to comply with the terms of the Contract;
  - (9) give the Contractor the opportunity at the Contractor's expense to carry out such remedial services as is necessary to correct the Contractor's failure or otherwise to rectify the breach within the Authority-specified time limits;
  - (10) purchase substitute services from elsewhere;
  - (11) claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
    - (a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
    - (b) obtaining the Contractor Deliverables in substitution from another supplier.
- b. In addition to the Authority's rights in clause F1.a., if the Authority reasonably believes at any time before the Contract Implementation Date that the Contractor will not be able to achieve Full Service Provision by the Contract Implementation Date then the Authority shall be entitled to terminate the Contract in whole or in part with immediate effect and without liability by giving written Notice to the Contractor.
- c. In the event that the Authority terminates the Contract in whole or in part pursuant to clause F1.a.(7) or F1.b. or for any other lawful reason, the Authority shall also have the right to require the Contractor to

transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

- d. This condition F1 shall also apply to any remedial services carried out by the Contractor in accordance with clause F1.a.(9).
- e. The Authority's rights and remedies under this condition F1 are in addition to its rights and remedies implied by statute and common law.

## **G Payment and Receipts**

### **G1. Payment**

- a. Schedule 3 (Contract Data Sheet) specifies that payment is to be enabled by P2P. Payment may only be made using P2P where the Contractor has agreed a DEFFORM 30 with the Authority prior to the Effective Date of Contract and the DEFFORM 30 agreement is referenced in Schedule 3 (Contract Data Sheet).
- b. Payment will be made by electronic transfer and prior to submitting any claims for payment under clause G1.e the Contractor shall provide to DBS Finance the name and address of the bank, the sort code and account number to which payment should be made and, if requested by DBS Finance, any further information where payment is to be made outside of the UK.
- c. In order to obtain approval for payment, the Contractor shall, upon completion of the Contract (or any part of the Contract for which the Contractor is entitled to payment):
  - (1) where payment is to be made using P2P, submit a properly completed DEFFORM 129J, in accordance with the instructions shown therein and in the explanatory notes;
  - (2) DELETED
  - (3) DELETED
- d. DELETED
  - (1) DELETED
  - (2) DELETED
- e. The Contractor shall submit a claim for payment to DBS Finance by either:
  - (1) using a properly prepared message structure and format for invoice payment using P2P in accordance with the arrangements set out, or referenced in DEFFORM 30; or
  - (2) DELETED
- f. The Authority shall pay all valid, properly completed claims for payment submitted by the Contractor to DBS Finance in accordance with clause G1.e on or before the day which is thirty (30) days after the later of:
  - (1) the day upon which a valid request for approval of payment is received by the Authority in accordance with clause G1.c; and
  - (2) the date of completion of the part of the Contract to which the request for approval of payment relates.
- g. DELETED

- h. The approval of payment by the Authority under clause G1.d shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under condition F1 or otherwise.
- i. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any Government Department.

## G2. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the provision of any Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).
- c. The Contractor is responsible for the determination of VAT liability. In cases of doubt, the Contractor shall consult HMRC and not the Authority's Representative. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under this Contract, when the liability is other than at the standard rate of VAT, and any changes to it.
- d. Where the provision of any Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables.
- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables.

## G3. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A6 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ('the Act')). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition G3 shall be subject to:
  - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause G1.i;
  - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (3) the Authority receiving notification under both clauses G3.b and G3.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause G3.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

- c. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under clauses G3.a.1 and G3.a.2; and
  - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses G3.a.(1) and G3.a.(2).
- d. The provisions of condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

## **H Contract Administration**

### ***H1. Progress Monitoring, Meetings and Reports***

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
- (1) performance/Delivery of the Contractor Deliverables;
  - (2) risks and opportunities;
  - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
  - (4) any other information reasonably requested by the Authority.

### ***H2. Authority Representatives***

- a. Any reference to the Authority in respect of:
- (1) the giving of consent;
  - (2) the delivering of any Notices; or
  - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,
- shall be deemed to be references to the Authority's Representatives in accordance with this condition H2.
- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition A2 (Amendments to Contract).

### H3. Notices

- a. A Notice served under the Contract shall be:
- (1) in writing in the English Language;
  - (2) authenticated by signature or such other method as may be agreed between the Parties;
  - (3) sent for the attention of the other Party's representative, and to the address set out in Schedule 3 (Contract Data Sheet);
  - (4) marked with the number of the Contract; and
  - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.
- b. Notices shall be deemed to have been received:
- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
  - (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
  - (3) if sent by facsimile or electronic means:
    - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
    - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

**J. The project specific DEFCONS and DEFCON SC variants that apply to this Contract are:**

N/A

**K. The special conditions that apply to this Contract are:**

N/A

**L. The processes that apply to this Contract are:**

N/A

**Definitions of Contract – Annex 1****Core Definitions**

- AG173** means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;
- AG210** means the MOD invoice form AG210 that suppliers submit as an invoice to enable a stage or milestone payment to be processed;
- Assets** means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;
- Authority** means the Secretary of State for Defence acting on behalf of the Crown;
- Authority's Representative(s)** shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b;
- Business Day** means any day excluding:
- a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;
  - b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and
  - c. such periods of holiday closure of the Contractor's premises of which the Authority is given written Notice by the Contractor at least ten (10) Business Days in advance;
- Central Government Body** a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- a. Government Department;
  - b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
  - c. Non-Ministerial Department; or Executive Agency.
- Child Labour Legislation** means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
- Conditions** means the terms and conditions set out in this document;
- Consignee** means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be supplied;

|                                     |   |
|-------------------------------------|---|
| <b>Contract</b>                     | means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition A2 (Amendments);   |
| <b>Contract Implementation Date</b> | means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required;  |
| <b>Contract Price</b>               | means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract;  |
| <b>Contractor</b>                   | means the person who, by the Contract, undertakes to provide the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;   |
| <b>Contractor Commercially</b>      | means the Information listed in the completed Schedule 6 -  |
| <b>Sensitive Information</b>        | Contractor's Commercially Sensitive Information Form, which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;   |
| <b>Contractor Deliverables</b>      | means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification;  |
| <b>Contractor's Representative</b>  | means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract;  |
| <b>Contractor's Team</b>            | means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract;   |
| <b>Control</b>                      | <p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none"> <li>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</li> <li>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</li> </ul> <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p> |
| <b>Crown Use</b>                    | in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;   |
| <b>DAB Form 10</b>                  | means the MOD invoice summary form;   |
| <b>DBS Finance</b>                  | means Defence Business Services Finance, at the address stated at Annex A to Schedule 3 (Contract Data Sheet);  |
| <b>DEFFORM</b>                      | means the MOD DEFFORM series which can be found at <a href="https://www.gov.uk/acquisition-operating-framework">https://www.gov.uk/acquisition-operating-framework</a> ;  |

|                                   |   |
|-----------------------------------|---|
| <b>DEF STAN</b>                   | means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;  |
| <b>Deliver</b>                    | means hand over the Contractor Deliverables to the Consignee. This shall include unloading and any other specific arrangements, agreed in accordance with SC3 Condition "Delivery / Collection" and Delivered and Delivery shall be construed accordingly;  |
| <b>Delivery Date</b>              | means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be delivered or made available for Collection;   |
| <b>Design Right(s)</b>            | has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;   |
| <b>Effective Date of Contract</b> | means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;  |
| <b>Firm Price</b>                 | means a price (Excl. VAT) which is not subject to variation;  |
| <b>Full Service Provision</b>     | means the provision by the Contractor of all of the Contractor Deliverables in accordance with the Conditions of this Contract;   |
| <b>Information</b>                | means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract;  |
| <b>Key Performance Indicators</b> | means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management";   |
| <b>Legislation</b>                | means in relation to the United Kingdom:<br><ol style="list-style-type: none"><li>any Act of Parliament;</li><li>any subordinate Legislation within the meaning of section 21 of the Interpretation Act 1978;</li><li>any exercise of the Royal Prerogative; or</li><li>any enforceable community right within the meaning of section 2 of the European Communities Act 1972;</li></ol> |
| <b>Minor Change</b>               | means any change that does not significantly/materially affect the nature of the Contractor Deliverables;   |
| <b>MOD Form 640</b>               | means the MOD form in 5 separate parts which may be obtained from the address specified for obtaining MOD forms and documentation in Schedule 3 (Contract Data Sheet);  |
| <b>Notices</b>                    | shall mean all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;   |
| <b>P2P</b>                        | means the MOD electronic ordering, receipting and payment system;   |

|                                 |   |
|---------------------------------|---|
| <b>Parties</b>                  | means the Contractor and the Authority, and Party shall be construed accordingly;   |
| <b>Schedule of Requirements</b> | means Schedule 2 (Schedule of Requirements) and Annex A to Schedule 2, which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable; |
| <b>Specification</b>            | means Schedule 5 (Specification) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables;  |
| <b>Subcontractor</b>            | means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);  |
| <b>Supported Businesses</b>     | means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;  |
| <b>Transparency Information</b> | means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.   |

Appendix - Addresses and Other Information

**1. Commercial Officer**  
 Def Comrcl CC-HOCS3c1  
 Kentigern House  
 65 Brown Street, Glasgow, G2 8EX  
 Tel: +  
 Email:

**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)

**9. Consignment Instructions**  
 The items are to be consigned as follows:  
  
 N/A

**3. Packaging Design Authority**  
  
 N/A  
  
 (Where no address is shown please contact the Project Team in Box 2)

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:  
**A. DSCOM,** DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH  
 Air Freight Centre  
 IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943  
 EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943  
**Surface Freight Centre**  
 IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946  
 EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946  
**B. JSCS**  
 JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)  
 JSCS Fax No. 01869 256837  
 www.freightcollection.com

**4. (a) Supply / Support Management Branch or Order Manager:**  
 Tel No:  
  
 (b) U.I.N.

**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>

**5. Drawings/Specifications are available from**  
  
 N/A

**12. Forms and Documentation are available through \*:**  
 Ministry of Defence, Forms and Pubs Commodity Management  
 PO Box 2, Building C16, C Site  
 Lower Arnott  
 Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)  
**Applications via fax or email:** DESLCSLS-OpsFormsandPubs@mod.uk

**6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to**  
  
 N/A  
  
 (where no address is shown the mauve copy should be destroyed)

**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.dlif.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

Finance Branch

Issue of Government Property YES  NO

RAC / LPC No / Project No NPB001

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

Requisition No HOCS1a/00009

UK Non-UK (non-EU Country) Non-UK (EU Country)

Project Management/ Production branch reference

If EU specify country:

Place of manufacture

|                          |                                     |          |                |
|--------------------------|-------------------------------------|----------|----------------|
| Outside the scope Exempt | <input type="checkbox"/>            | Item Nos |                |
| Taxable Zero Rate        | <input type="checkbox"/>            | Item Nos |                |
| Taxable - Standard Rate  | <input checked="" type="checkbox"/> | Item Nos | All except T&S |

Place of packaging

Contractor's Tel No

(where a contract is with a contractor whose place of business is not the UK, JSP 916 should be consulted)

