

46. Project Specific Conditions

1. LIMITATION OF CONTRACTOR'S LIABILITY

Definitions

1.1. In this Clause 1 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

"Charges" means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor's other obligations under this Contract, as determined in accordance with this Contract;

"Default" means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

"Law" means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgement of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

"Term" means the period commencing on the commencement date, ending on 31st March 2025 or on earlier termination of this Contract.

Unlimited liabilities

1.2. Neither Party limits its liability for:

1.2.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

1.2.2. fraud or fraudulent misrepresentation by it or its employees;

1.2.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

1.2.4. any liability to the extent it cannot be limited or excluded by law.

1.3. The financial caps on liability set out in Clauses 1.4 and 1.5 below shall not apply to the following:

1.3.1. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:

1.3.1.1. the Contractor's indemnity in relation to Condition 34 (Third Party IP – Rights and Restrictions);

- 1.3.1.2. the Contractor's indemnity in relation to TUPE at Schedule 20.
- 1.3.2. for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
 - 1.3.2.1. the Authority's indemnity in relation to TUPE under Schedule 20.
- 1.3.3. breach by the Contractor of DEFCON 532B and Data Protection Legislation; and
- 1.3.4. to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
- 1.3.5. For the avoidance of doubt any payments due from either of the Parties to the other in accordance with the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clauses 1.4 and/or 1.5.

Financial limits

- 1.4. Subject to Clauses 1.2 and 1.3 and to the maximum extent permitted by Law:
 - 1.4.1. throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - 1.4.1.1. in respect of DEFCON 76 (SC2) [redacted] per single event;
 - 1.4.1.2. in respect of Condition 43b [redacted] per single event;
 - 1.4.1.3. in respect of DEFCON 611 (SC2) [redacted] per single event; and
 - 1.4.1.4. in respect of DEFCON 612 [redacted] per single event.
 - 1.4.2. without limiting Clause 1.4.1 and subject always to Clauses 1.1, 1.2, and 1.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [redacted] per single event.
 - 1.4.3. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability set out in Clauses 1.4.1 and 1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 1.4.1 and 1.4.2 of this Contract.
- 1.5. Subject to Clauses 1.2, 1.3 and 1.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall

in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

- 1.6. Clause 1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

- 1.7. Subject to Clauses 1.2, 1.3 and 1.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- 1.7.1. indirect loss or damage;
- 1.7.2. special loss or damage;
- 1.7.3. consequential loss or damage;
- 1.7.4. loss of profits (whether direct or indirect);
- 1.7.5. loss of turnover (whether direct or indirect);
- 1.7.6. loss of business opportunities (whether direct or indirect); or
- 1.7.7. damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

- 1.8. The provisions of Clause 1.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

- 1.8.1. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - (i) to any third party;
 - (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 1.8.2. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- 1.8.3. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

- 1.8.4. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- 1.8.5. damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);
- 1.8.6. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- 1.8.7. any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 1.8.8. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 1.8.9. any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

- 1.9. If any limitation or provision contained or expressly referred to in this Clause 1 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 1.

Third party claims or losses

- 1.10. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under Condition 34 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - 1.10.1. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - 1.10.2. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

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

2. CONTRACT OPTIONS

- 2.1. The Contractor hereby grants to the Authority the irrevocable options to extend the Contract duration by 2 (two) individually exercisable Option Years, it being agreed that the Authority has no obligation to exercise all or any of such options.
- 2.2. The Authority may exercise each of the options set out in Clause 2.1 above, provided that the Authority exercises any such option, by formal written notice to the Contractor, no later than 3 (three) months prior to, as appropriate, the expiry date of the Contract or the end of an Option Year that has already been taken up.
- 2.3. For the purposes of Clause 35. – Pricing and Payment, the Firm Prices and/or Firm Rates applicable to each Option Year shall be those detailed at Schedule 11 (Schedule of Prices).
- 2.4. In the event that the Authority exercises its right to take up any Option Year, the corresponding extension to the Contract duration shall subsequently be recorded by a formal Contract Amendment in accordance with the DEFCON 503 (Edn 07/21) (Formal Amendments to Contract).

3. PERFORMANCE

Item 1 – Provision of tooling and equipment

- 3.1. The Contractor shall provide all tooling and equipment including, but not limited to, a complete and fully serviceable Dive Spread, a complete and fully serviceable General Spread and a complete and fully serviceable Testing Spread after mobilisation period in accordance with the Statement of Technical Requirement (SOTR) 4.3 (a readiness to use), required for the Contractor's performance and delivery of any and all activities as may be tasked by the Authority from time to time in accordance with Schedule 10 (Statement of Technical Requirements) and Condition 47.
- 3.2. The Contractor's tooling and equipment shall include, but not be limited to, the list of equipment at Annex B to the SOTR at Schedule 10.
- 3.3. All such tooling and equipment shall be for the sole performance of the Authority's requirements as may be tasked under the Contract and shall be permanently located in the Falkland Islands for the entire duration of the Contract, including any Option Year(s) taken up by the Authority in accordance with Clause 2.
- 3.4. The Contractor shall at all times be responsible for the maintenance, repair, storage of all Contractor's tooling and equipment.

Item 2 – Mobilisation of Contractor's tooling and equipment

- 3.5. The Contractor shall mobilise to the Falkland Islands, on commencement of the Contract, all tooling and equipment required to be provided under Item 1 of Schedule 2 of the Schedule of Requirements.
- 3.6. The Contractor shall be responsible for all packing, all movement and transportation, all import and export arrangements and formalities, and any associated fees, taxes, duties or charges of any nature whatsoever.
- 3.7. Mobilisation shall be deemed to have been completed following receipt and acceptance, to the satisfaction of the Authority's Project Manager, of the Contractor's declaration required to be delivered under Schedule 16, Contract Deliverable D-1.

Item 3 – Provision of materials and consumables for GFE maintenance and calibration

- 3.8. The Contractor shall provide all materials and consumable items for the Contractor's maintenance and calibration of the Government Furnished Equipment (GFE) detailed at Schedule 12.
- 3.9. The Contractor shall keep all such GFE maintained and calibrated for the entire duration of the Contract, including any Option Year(s) taken up by the Authority in accordance with Clause 2. Maintenance and calibration of GFE shall be undertaken by the Contractor at the commencement of each tasked SPM maintenance activity and shall be completed, at no additional cost to the Authority, within the 'Readiness to Use' periods as specified at Requirement No 4.3 of the Statement of Technical Requirements (Schedule 10).
- 3.10. The Contractor shall at all times be responsible for the maintenance, repair, storage of all Government Furnished Assets (GFA).

Item 4 – Performance of tasked activities

- 3.11. The Contractor shall perform and deliver any activities as may be tasked by the Authority from time to time in accordance with Schedule 10 (Statement of Technical Requirements) and Condition 47.
- 3.12. The Contractor shall at all times exercise due skill, care and diligence in the performance of tasked activities, and shall take full responsibility for the adequacy, safety and compliance of the Contractor's operations.
- 3.13. The Contractor shall ensure that all activities shall be performed with due diligence and that all risks (including environmental risks and risks of pollution) are minimised at every step of the performance of the tasked activities.

Diving Operations

- 3.14. All diving activities provided under the Contract and all associated diving personnel including sub-contract personnel, shall be compliant with the standards of Statutory Instrument 1997 No. 2776 (the Diving at Work Regulations 1997) including all subsequent amendments thereto and any associated Approved Code of Practice (ACOP). The UK HSE Diving Projects Offshore Diving at Work ACOP shall apply for diving activities connected to the in-service Single Point Mooring (SPM) and the UK HSE Commercial Diving Projects Inland/Inshore ACOP for other diving activities. In

addition, all aspects of the diving activity including the provision, testing and maintenance of all dive equipment shall be compliant with relevant ACOP and industry guidance.

- 3.15. The Contractor shall produce, and deliver to the Authority's on-site Project Manager, all necessary documentation for any diving operation including, but not limited to, a Dive Plan.

Third Party Use

- 3.16. From time to time, the Authority may instruct the Contractor to provide use of diving equipment and/or other individual pieces of equipment to third party HSE qualified personnel or military dive teams to conduct diving operations that are compliant with the Diving at Work Regulations 1997.
- 3.17. During the use of the Contractor's equipment by a third party, the Contractor shall:
- 3.17.1. provide up to a maximum of two dive technicians to maintain and run the Contractor's equipment;
 - 3.17.2. provide a diving decompression chamber when required by the Authority;
 - 3.17.3. allow the third party to augment the Contractor's dive team; and
 - 3.17.4. provide equipment used for SPM maintenance and pressure testing when required by the Authority.
- 3.18. The Contractor shall be liable for any loss incurred by the Authority caused by death, personal injury, damage, cost and/or expense, in accordance with Clause 1.10, associated with the use of Contractor equipment by a third party. For the avoidance of doubt, the Contractor shall be liable for all and any loss outlined in this Clause 3.18 unless this loss was caused solely by the acts, omissions, negligence or wilful misconduct of the third party, Authority or the Authority's personnel.

Item 5 – Supply of Spares and Equipment

- 3.19. The Contractor shall supply new manufacture spares and equipment as may be tasked by the Authority from time to time in accordance with Condition 47.
- 3.20. A Certificate of Conformity shall be provided by the Contractor in accordance with the provisions of DEFCON 627 (Edn 11/21) (Quality Assurance – Requirement for a Certificate of Conformity) for each item supplied under Item 5.
- 3.21. Where the Authority requires provision of new manufacture spares or equipment in accordance with Item 5 of the Schedule of Requirements (Schedule 2), the Contractor shall provide a quotation for the supply of any such item(s) using, at all times, a competitive or best value for money solution.

Item 6 – Refurbishment of Articles

- 3.22. The Contractor shall refurbish Articles as may be tasked by the Authority from time to time in accordance with Condition 47.

- 3.23. A Certificate of Conformity shall be provided by the Contractor in accordance with the provisions of DEFCON 627 (Edn 11/21) (Quality Assurance – Requirement for a Certificate of Conformity) for each item refurbished under Item 6.
- 3.24. Where the Authority requires provision of the refurbishment of Articles in accordance with Item 6 of the Schedule of Requirements (Schedule 2), the Contractor shall provide a quotation for the refurbishment of any such Articles using, at all times, a competitive or best value for money procurement solution.

Item 7 – Demobilisation of Contractor's tooling and equipment

- 3.25. On expiry of the Contract or earlier termination in accordance with the Contract terms and conditions, the Contractor shall be solely responsible for demobilisation of any and all Contractor's tooling and equipment held in the Falkland Islands in support of the Contract, from the Falkland Islands to the UK, and to its final destination.
- 3.26. The Contractor shall be responsible for all packing, all movement and transportation, all import and export arrangements and formalities, and for any associated fees, taxes, duties or charges of any nature whatsoever.
- 3.27. Demobilisation shall be deemed to have been completed following receipt and acceptance, to the satisfaction of the Authority's Project Manager, of the Contractor's declaration to that effect. To be delivered under Schedule 16, Contract Deliverable D-9.
- 3.28. The Authority will use best endeavours to ship the Contractor's tooling and equipment back to Marchwood before the end date of the Contract. However, if this is not possible, the Authority will raise a TAF before the expiry of the Contract to pay for the hire of the Contractor's non-operational tooling and equipment during the transit period to Marchwood which will be at [redacted] the prices outlined in Table 3 of Schedule 11.

4. GOVERNMENT FURNISHED ASSETS (GFA)

- 4.1. The Authority will provide the Government Furnished Assets detailed at Schedule 12 in support of the Contractor's performance and delivery of activities that may be tasked by the Authority under Item 4 of the Schedule of Requirements.

Government Furnished Services

- 4.2. The Contractor hereby acknowledges and accepts that, due to the nature of the Government Furnished Services (GFS) detailed at Schedule 12, and the Authority's need to prioritise allocation and use of such GFS according to priority of demand, the provision of such GFS in support of a tasked activity under the Contract may be subject to delay. Accordingly, the Contractor further acknowledges and accepts that the provisions of this Clause 4 set out the Contractor's sole rights and remedies in relation to any late or non-provision of GFS under the Contract and that should there be any conflict between such provisions and any other provisions of the Contract, Clause 4.3 shall take precedence for the purposes set out therein.

- 4.3. In the event of any delay in the provision of GFS in support of an approved Task Authorisation Form (TAF) then the provisions of Clause 9 and Clause 7.5 shall apply.

Transport Overseas

- 4.4. The Authority shall provide Transport Overseas (i.e. flights) to and from the Falkland Islands for performance of activities to be performed under the Contract in accordance with the provisions of DEFCON 76 (Edn 06/21) (Contractor Personnel at Government Establishments).
- 4.5. The Contractor shall be responsible for ensuring they are aware of and comply with all information, rules and regulations applicable to their operating in the South Atlantic Islands as are published within the Falkland Island Government website.
- 4.6. Always subject to availability, the Contractor may be able to airfreight spares and equipment on the Falkland Island Airbridge or freighter flights in an emergency. This service will only be provided in very exceptional circumstances, and only when deemed necessary by the Authority.

Medical Treatment Overseas

- 4.7. The Authority will provide Medical Treatment Overseas in accordance with the provisions of DEFCON 76 (Edn 06/21) (Contractor Personnel at Government Establishments).

5. MOD INVENTORY ITEMS

- 5.1. The Authority holds a limited stock of spares and consumable items in the Falkland Islands that may, subject always to stock availability and without any obligation whatsoever on the Authority, be made available to the Contractor in support of activities that may be tasked under Item 4 of the Schedule of Requirements. Prior to submitting a Firm Price proposal for such a task activity in accordance with Condition 47, the Contractor shall ascertain from the Authority whether any MOD Inventory Items detailed at Schedule 13 required for performance and delivery of such task activity may be provided by the Authority. It is recognised that any such MOD Inventory Items would be provided to the Contractor for embodiment or consumption in performance of the task and would not be returned to the Authority.

6. ADDITIONAL SERVICES

Transportation of Spares

- 6.1. The Authority will provide transportation of equipment and spares from the United Kingdom to the Falkland Islands, and return as necessary to the UK, using the Purple Gate Process, unless it is not reasonably practical to do so.

Purple Gate Process

- 6.2. The Contractor shall discuss the equipment or spares to be transported, with the Authority who will deem whether Air Freight or Sealift is the most appropriate method of transportation. Unless otherwise agreed transport shall be by sea.

- 6.3. The following criteria for determining the method of freight and speed of dispatch shall apply:
- 6.3.1. Spares deemed to require immediate transportation to the Falkland Islands by the Authority shall enter the MOD supply chain through the purple gate in [redacted]. The Contractor shall ensure that spares are airfreighted dependent on size, weight and Cargo hazard classification through the [redacted]. The Contractor must obtain prior approval from the Port Services Manager or other authorised BFSAI personnel before shipping any articles.
 - 6.3.2. The Contractor shall ensure that all consignments must be formally requested and booked through the DE&S Booking Coord Office [redacted] the booking Co-ord will give the Contractor a booking reference and date usually either an am or pm slot for delivery this is none flexible and deviation from this appointment will void the booking. In the event that the booking is cancelled or cannot be made, the consignor must request a change or request another slot; they are to contact the booking office at the earliest opportunity to avoid disappointment.
 - 6.3.3. Purple gate delivery address:

[redacted]
 - 6.3.4. The Contractor shall ensure that all deliveries or consignments to purple gate are hazard free (or contain the correct hazard warning sheets and Safety Data Sheets (hazardous consignments will not fly on the [redacted] without the correct packaging)), robust and suitable for overseas transportation (standards can be found in DEFSTAN 81-41 or DEFCON 129), a contents list must be provided for packages that contain more than one item and the correct labelling must be used and displayed. The Contractor shall ensure that the package is not too big to fit on the [redacted].
 - 6.3.5. Equipment or spares required for routine support are to be despatched for onward shipping by sea on the [redacted]. The Contractor shall be responsible for the booking of equipment being shipped to the Falkland Islands onto the [redacted] and the delivery of the items to [redacted]. The Contractor shall ensure that all such stores will be despatched within 28 days of receipt or in accordance with the delivery date provided for shipment or in accordance with an alternative timeframe authorised by the Authority.
- 6.4. If sealift, for an article requiring immediate delivery, is deemed by the Authority to be the most appropriate transportation route, the Contractor shall be required to send packaged equipment to a MOD establishment nominated by the Authority. The Contractor shall ensure that containers for sealift are under 20T and must have forklift capability. Information on Packaging requirements can be found within DEFSTAN 81-041 which is available to the Contractors within the Government "Defence Gateway" Internet site or DEFCON 129.

- 6.5. The Contractor shall undertake the consignment of all freight, completion of customs, dangerous goods, and all other documentation as may be required for the transportation of equipment to and from [redacted].
- 6.6. The Contractor shall obtain and retain receipts for all stores accepted for despatch by the Authority. Such receipts must be retained and produced for claims of loss and damage.

Visiting Contractor's Entitlements

- 6.7. Subject to the additional provisions at Clauses 6.9 to 6.14 below, the Contractor may avail itself of the entitlements set out in the Falkland Islands Base Standing Orders J4-Logs-25 "The British Forces South Atlantic Islands (BFSAI) Policy for the Entitlements for All Visiting Contractors" at Schedule 17.

Accommodation

- 6.8. The Authority will provide, unless it is not reasonably practical to do so, accommodation for Contractor's Personnel deployed under the Contract at the [redacted] in the Falkland Islands in accordance with the Falkland Islands Base Standing Orders J4-Logs-25 "The British Forces South Atlantic Islands (BFSAI) Policy for the Entitlements for All Visiting Contractors" at Schedule 17. The allocation of military accommodation is on a rank equivalent basis. The standard of accommodation provided for contractors at [redacted] may fall short of those expected in the UK. The Authority's Salvage and Marine Operations Team has no influence on the accommodation policy, or the standard of accommodation provided.
- 6.9. In exceptional circumstances the Contractor's personnel may be able to apply to use the military Messes at [redacted]. Permission for such use would be at the discretion of the respective President or Chairman of the Mess Committee.
- 6.10. Military Messes have strict rules on dress and behaviour, breaches of which may see the individual being excluded from the Mess. The Authority would find any such incident unacceptable and shall expect the Contractor to return the individual to the UK at no cost or impact to the Authority.
- 6.11. In the event the Contractor chooses not to avail itself of accommodation provided at [redacted] the Authority shall not be responsible for any costs of the Contractor or the Contractor's personnel in relation to alternative accommodation.

Meals

- 6.12. The Authority will provide, unless it is not reasonably practical to do so, meals for Contractor's personnel who are accommodated at [redacted]. A breakfast and dinner will normally be provided at [redacted] for Contractor's personnel deployed under the Contract. A midday meal provided for Contractor's personnel when aboard any of the Authority's chartered vessels used in support of a tasked activity under the Contract (see Schedule 12, Government Furnished Service reference GFS-3) may be limited to a cold packed lunch or basic cooked meal.

- 6.13. In the event the Contractor chooses not to avail itself of any meal provided at [redacted] or aboard any of the Authority chartered vessels the Authority shall not be responsible for any costs of the Contractor or the Contractor's personnel in relation to alternative meals.

7. PRICE

- 7.1. All prices under the Contract shall be agreed, and paid, in £ Sterling (i.e. GB Pounds Sterling).

Items 1, 2 and 7 of the Schedule of Requirements

- 7.2. The prices detailed within the Schedule of Requirements and at Schedule 11, Table 1, Table 3 and Table 4 are Firm Prices i.e. not subject to variation in any respect, and include all costs, including but not limited to all labour, materials, sub-contract costs, overheads and profit.

Item 4 of the Schedule of Requirements

- 7.3. The rates detailed at Schedule 11, Table 2, are Firm Rates i.e. not subject to variation in any respect, and include all costs, including but not limited to all labour, overheads and profit. Such Firm Rates shall be used in the agreement of prices for all activities tasked under Item 4 of the Schedule of Requirements. This is excluding the price for a NDT Technician and NDT equipment, which shall be calculated on a [redacted] basis. The Contractor shall provide a quotation for the NDT Technician and NDT equipment using, at all times, a competitive or best value for money procurement solution.

- 7.4. Firm Prices shall be agreed in advance and prior to the authorisation of any Task Authorisation Form (TAF) in accordance with Condition 47.

- 7.5. The agreed Firm Price of an authorised TAF shall only be subject to variation where;

- 7.5.1. provided always that the Contractor would otherwise have been fully able to perform the tasked activities (i.e. there is no other reason, whatsoever, that would have prevented the Contractor's performance), there is a delay to an agreed TAF programme schedule as a direct result of the provision of Government Furnished Services (GFS), Large Marine Mammals, or Weather Delay as set out under Clauses 4.2 to 4.3, 8.1 and 8.2 respectively,

and;

- 7.5.2. following mitigation action in accordance with Clause 9, unmitigable delay has resulted in the Contractor not being able to complete performance of the tasked activities within the agreed TAF programme schedule.

Or;

- 7.5.3. there is a delay to an agreed TAF programme schedule as a result of an event or events other than those set out under Clauses 4.2 to 4.3, 8.1 and 8.2 that is not as a result of any fault, act, omission, neglect, wilful misconduct or negligence of the Contractor or the Contractor's personnel,

and;

- 7.5.4. following mitigation action in accordance with Clause 9, unmitigable delay has resulted in the Contractor not being able to complete performance of the tasked activities within the agreed TAF programme schedule.

Or;

- 7.5.5. where a TAF is subject to suspension or stoppage under the provisions of Clause 8.3.2

- 7.6. In the circumstances set out under Clauses 7.5.1 to 7.5.2, the TAF Firm Price shall be subject to increase by an amount equal to the additional time for each of the affected Contractor's personnel, between the programmed and the actual date of arrival in the UK on the inbound (return) Airbridge from the Falkland Islands, multiplied by the applicable Firm Rate at Schedule 11, Table 2.
- 7.7. In the circumstances set out under Clauses 7.5.3 to 7.5.4, the Contractor shall be entirely responsible for any additional time required to complete performance of the tasked activities. However, the TAF Firm Price may be subject to increase by an amount equal to the additional time for each of the affected Contractor's personnel, between the Contractor's completion of performance of the tasked activities and the next available Falkland Islands outbound Airbridge to the UK, multiplied by the applicable Firm Rate at Schedule 11, Table 2, subject always to the Authority's right, at the Authority's sole discretion, to require the Contractor to perform additional activities during any such further time period.
- 7.8. In the circumstances set out under Clause 7.5.5, the TAF Firm Price shall be amended to reflect any changes made to the TAF programme schedule inclusive of the number of days up until the arrival of the Contractor's personnel back into the UK but shall only include the number of days when services were properly performed.

8. DELAY, SUSPENSION OR STOPPAGE TO TASKED ACTIVITIES

Large Marine Mammals

- 8.1. In the event that the presence of Large Marine Mammals at the location of a Contractor's diving operation under the Contract necessitates, subject to agreement of the Authority's on-site Project Manager, a delay to or suspension of the diving operation for reasons of Health and Safety then the provisions of Clause 9 shall apply.

Weather Delay

- 8.2. In the event that Falkland Islands local weather conditions delay, subject to agreement of the Authority's on-site Project Manager, the Contractor's performance of activities tasked under the Contract then the provisions of Clause 9 shall apply.

Suspension or Stoppage

- 8.3. In the event that an activity tasked under Item 4 of the Schedule of Requirements and being performed in the South Atlantic Islands is subject to an event that causes, always

subject to agreement of the Authority's on-site Project Manager, complete suspension or stoppage of the tasked activity, the following provisions shall apply:

- 8.3.1. Where such suspension or stoppage is due to any fault, act, omission, neglect, wilful misconduct or negligence of the Contractor or the Contractor's personnel, the Contractor shall remain entirely responsible to complete performance of the tasked activity within the agreed TAF Firm Price, at no additional cost to the Authority, even in the eventuality that a return of the Contractor or the Contractor's personnel to the South Atlantic Islands is required for the Contractor's completion of performance of the tasked activity.
- 8.3.2. Where such suspension or stoppage is due to an unforeseeable failure of the Single Point Mooring or of Government Furnished Equipment, not as a result of any fault, act, omission, neglect, wilful misconduct or negligence of the Contractor or the Contractor's personnel, and where repair or rectification of the failure is not possible within the agreed TAF programme schedule, the tasked activity shall be brought to a state of closure acceptable to the Authority's on-site Project Manager and the TAF Firm Price shall be subject to variation in accordance with Clause 7.5.5.
- 8.3.3. Where such suspension or stoppage is, subject to agreement of the Authority's on-site Project Manager, due to an unforeseeable failure of the Contractor's tooling and equipment, and not as a result of any fault, act, omission, neglect, wilful misconduct or negligence of the Contractor or the Contractor's personnel, and where repair or rectification of the failure is not possible within the agreed TAF programme schedule, the tasked activity shall be brought to a state of suspension acceptable to the Authority's on-site Project Manager pending resumption and completion by the Contractor. The Contractor shall remain entirely responsible to complete performance of the tasked activity within the agreed TAF Firm Price, at no additional cost to the Authority, even in the eventuality that a return of the Contractor or the Contractor's personnel to the South Atlantic Islands is required for the Contractor's completion of performance of the tasked activity.
- 8.4. In addition to the provisions set out in this Clause 8 and without limiting any other rights of the Authority under the Contract, the Authority reserves and shall have the absolute right to suspend or stop all operations or performance of any task activity for any reason relating to health and safety, environmental concern (including but not limited to an oil pollution incident) or non-compliance that is due to or attributable to the Contractor or the Contractor's personnel. In such circumstances, the Contractor shall be liable in accordance with Clause 1.4.2 for any additional costs incurred by the Authority associated with such suspension or stoppage, from the point at which operations or performance of the task activity is suspended or stopped until performance of the task activity resumes.

9. CONTRACTOR'S OBLIGATION TO MITIGATE DELAYS

- 9.1. The Contractor shall use all best endeavours to mitigate, to the greatest possible extent, and to the satisfaction of the Authority's on-site Project Manager, the impact of any delay, howsoever caused, to an agreed TAF programme schedule i.e. the period from Contractor's personnel arrival for the UK outbound Airbridge to the Falkland Islands until the programmed UK arrival of the inbound Airbridge on return from the Falkland Islands.

- 9.2. The Contractor shall ensure that Contractor's personnel return to the UK as programmed wherever possible and that only those personnel required for completion of the Contractor's performance of the tasked activities remain to do so.
- 9.3. Only where, following mitigation in accordance with this Clause 9, a delay results in an overall impact (an unmitigable delay) on the Contractor's completion of performance of the tasked activities within an agreed TAF programme schedule, the provisions of Clause 7.5 shall apply.
- 9.4. Where delay is mitigated to the extent that there is no overall impact on the Contractor's completion of performance of the tasked activities within the agreed TAF programme schedule there shall be no variation to the associated TAF Firm Price.

10. EMERGENT WORK

- 10.1. In the event that emergent work is identified during the Contractor's performance of an activity in the South Atlantic Islands that has been tasked under Item 4 of the Schedule of Requirements, and, subject to availability of any required spares or equipment and agreement between the Contractor and the Authority's on-site Project Manager, such emergent work can be completed within the agreed TAF programme schedule, then such emergent work shall be completed by the Contractor at no additional cost to the Authority.
- 10.2. In the event that emergent work is identified as described at Clause 10.1 above that cannot be completed within the agreed TAF programme schedule, such emergent work shall, at the Authority's sole discretion, be subject to agreement of a separate Task Authorisation Form in accordance with Condition 47. Wherever possible, the timescale for performance and completion of emergent work shall be concurrent and/or in direct continuation of the same TAF deployment period.

11. NOT USED

12. DELIVERY AND ACCEPTANCE

- 12.1. The Contractor shall deliver all Contract Deliverables to the Authority in accordance with Schedule 16.
- 12.2. Subject always to their acceptability to the Authority, confirmation of acceptance of Contract Deliverables D-2 to D-4 will be provided, in writing, by the Authority's Commercial Manager or their authorised representative.
- 12.3. With the exception of Contract Deliverables D-2 to D-4, subject always to their acceptability to the Authority's Project Manager, or their authorised representative, confirmation of acceptance of Contract Deliverables will be provided, in writing, by the Authority's Project Manager or their authorised representative by completion of Part H of the associated Task Authorisation Form (TAF) in accordance with Condition 47.

13. PAYMENT

13.1. All payments to the Contractor shall be made through the Authority's Contract, Purchasing and Finance (CP&F) system.

13.2. Payments shall be made as follows:

Item 1

13.3. The Firm Price for Item 1 of the Schedule of Requirements shall be payable quarterly in arrears by four equal instalments.

Item 2

13.4. The Firm Price for Item 2 of the Schedule of Requirements shall be payable in arrears following completion of delivery of Contract Deliverable D-1 to the satisfaction of the Authority's Project Manager.

Item 3

13.5. The price for Item 3 of the Schedule of Requirements shall be payable quarterly in arrears by four equal instalments.

Items 4, 5 and 6

13.6. The agreed Task Authorisation Form (TAF) prices for individual TAFs under Items, 4, 5 and 6 of the Schedule of Requirements shall be payable in arrears following delivery and acceptance of all task deliverable activities and/or Articles under each individual TAF signified by the Authority's completion of Part H of the associated TAF in accordance with Condition 47.

Item 7

13.7. The Firm Price for Item 7 of the Schedule of Requirements shall be payable in arrears following completion of delivery of Contract Deliverable D-9 to the satisfaction of the Authority's Project Manager.

14. HEALTH, SAFETY AND ENVIRONMENT

14.1. The Contractor shall ensure that working practices are at all times in accordance with UK Health, Safety and Environmental Legislation. The Contractor shall also comply with the legislation of any other nation where any activity under the Contract is to be undertaken.

14.2. The responsibility for all safety aspects relating to performance of any activity under the Contract shall rest with the Contractor.

14.3. The Contractor shall take all precautions and all reasonable actions in order not to cause damage to the marine environment and shall mitigate the consequence of any damage.

15. OIL POLLUTION

- 15.1. The Contractor shall comply with all applicable legislation and regulation in respect to oil pollution.
- 15.2. The Contractor shall produce a plan to mitigate any risk of oil pollution prior to the commencement of any maintenance activities that is of a sufficient standard to the Authority.
- 15.3. In the event of an oil pollution incident, the Contractor shall ensure that the incident is dealt with to minimise impact to the environment and where possible recover any oil spilt. The Contractor shall ensure that all oil spills into the environment are to be reported to East Cove Port Operations.
- 15.4. In the event of a major oil pollution incident, the Authority will provide, as far as reasonably practicable, assistance to the Contractor to contain such oil pollution incident in accordance with the East Cove Port Oil Contingency plan.
- 15.5. The Contractor shall be liable for any oil pollution incident which results from a failure to comply with any applicable legislation and regulation or results from any fault, act, omission, neglect, negligence or wilful misconduct of the Contractor or the Contractor's personnel. The Contractor shall indemnify the Authority against any loss incurred by the Authority as a result of an oil pollution incident.
- 15.6. For the avoidance of doubt, the Contractor shall not be liable for an oil pollution incident caused by hydrostatic pressure testing when following instructions given by SALMO or HQ BFSAI personnel or when an oil pollution emergency was not a direct result of the Contractor's planned maintenance activities unless such oil pollution incident was worsened by any fault, act, omission, neglect, negligence or wilful misconduct of the Contractor or the Contractor's personnel.

16. COMPLIANCE

- 16.1. The Contractor shall keep itself informed of and shall comply with:
 - 16.1.1. all applicable laws and regulations.
 - 16.1.2. requirements and orders of classification societies, certifying agencies, certifying authorities and public authorities having jurisdiction.
- 16.2. The Authority reserves the right to conduct safety inspections and/or audits at any point during the Contractor's performance of the Contract.

17. QUALITY ASSURANCE

- 17.1. The Contractor shall deliver a Quality Plan as set out in AQAP 2105 Edn C. The Quality Plan shall be delivered to the Authority in accordance with Schedule 16 (Contract Deliverables) and, once accepted by the Authority, shall be incorporated into the Contract at Schedule 18.
- 17.2. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Quality Plan.

18. INSURANCE

- 18.1. The Contractor shall maintain, with reputable insurers, necessary insurance as required by all applicable laws and regulations pertinent to this Contract and shall maintain necessary insurance in accordance with the Contractor's liability under Clause 1.4 including but not limited to third party liability insurance.
- 18.2. The Contractor shall ensure that all insurance is effective from the commencement date of the Contract.
- 18.3. The Authority reserves the right to request copies of any insurance certificates for the insurance provided by the Contractor under this Contract and the Contractor shall provide such insurance certificates in accordance with the Authority's request.

19. WAIVER OF SALVAGE RIGHTS

- 19.1. The Contractor shall hereby waive their right to claim any award for salvage performed on property owned by or contracted by the Authority. The Contractor shall indemnify the Authority against any claim for a salvage award brought by any employee and/or sub-contractor of the Contractor in relation to any property owned by or contracted to the Authority.

20. CONFIDENTIALITY

- 20.1. The Contractor or the Contractor's personnel shall not release to the media or place in the public domain any information relating to the Contract, or to any of the activities or services under the Contract, without the prior written consent of the Authority.
- 20.2. All information or data provided by the Authority or obtained in connection with the performance of the Contract, and all information howsoever relating to the Contract, shall not be disclosed without the prior written consent of the Authority. The Contractor shall be under strict obligation to ensure that all personnel provided by the Contractor, including but not limited to the Contractor's personnel and/or any sub-contract personnel, abide by the terms of this provision.
- 20.3. This Clause 20 (Confidentiality) shall not apply to any information or data that has already been published or is in the public domain.
- 20.4. The provisions and obligations of this Clause 20 (Confidentiality) shall survive and remain in full force and effect following completion of the Contract.

21. PERFORMANCE MONITORING AND MANAGEMENT

- 21.1. In order to embody a high level of performance under the Contract, the Contractor's performance shall be monitored against the Key Performance Indicators (KPIs) detailed at Schedule 19 (Key Performance Indicators). The Contractor shall maintain a record of its performance against each of such performance indicators and submit to the Authority's Project Manager no later than the 10th Business day prior to both the 6 Monthly and the Annual Contract Progress Meetings at which performance will be reviewed.

21.2. In the event of performance below required levels:

- 21.2.1. The Authority will set out the requirements for the Contractor's improvement against any shortfalls against the KPIs.
- 21.2.2. The Contractor shall provide their detailed proposal for implementation of improvements to performance to be agreed with the Authority.
- 21.2.3. The performance incentive adjustments set out at Schedule 19 shall be applied.

22. MEETINGS

22.1. The Contractor shall be required to attend meetings with the Authority in accordance with this Clause 22 (Meetings) and Section 6, item B of the Statement of Technical Requirements. The Contractor shall ensure that its representatives are suitably qualified to attend such meetings. Meetings will be held at the Authority's premises at Abbey Wood Bristol unless otherwise specified.

22.2. For meetings held at the Authority's premises at Abbey Wood Bristol the Authority will be responsible for compiling and distributing the agenda and for the recording and distribution of the meeting minutes.

22.3. Meetings will include, but are not limited to:

- 22.3.1. A Contract Initiation Meeting to be held within 6 (six) weeks of the date of Contract award.
- 22.3.2. A Contract Progress Meeting to be held on a six-monthly basis.
- 22.3.3. An Annual Contract Progress Meeting to be held within one month after the end date of each year of the Contract.
- 22.3.4. A Contract Closure Meeting to be held within one month prior to the expiry date of the Contract.

22.4. The Contractor's representatives shall be required to attend Telephone and Video Conferencing meetings as required.

23. TELEPHONE SUPPORT

23.1. The Contractor shall provide appropriate contact details and be contactable during normal working hours, Monday to Friday 08:00 to 17:00 (UK local time). The Contractor shall acknowledge and initiate a response to Contract related queries requested by the Authority within 2 (two) hours.

23.2. The Contractor shall nominate a Suitably Qualified and Experienced Person (SQEP) who shall be responsible for responding to urgent technical queries from the Authority. Such nominated person shall:

- 23.2.1. Acknowledge receipt of the urgent technical query within 2 (two) hours and;

- 23.2.2. Provide a full response within the timescale requested; or
- 23.2.3. Immediately justify to the Authority the inability to respond in the requested timescale and mutually agree a revised timescale with the Authority; and
- 23.2.4. In any event provide a full response to the Authority's urgent technical queries within 1 (one) Business Day of the Contractors acknowledgement of receipt of such queries in accordance with Sub clause 23.2.1.

24. DISPOSAL

- 24.1. In the event that the Authority requires the Contractor to dispose of any Government owned articles or material, the Contractor shall undertake such disposal in accordance with DEFCON 611 (Edn 02/16) (Issued Property).

25. ACQUIRED RIGHTS DIRECTIVE

- 25.1. The Contractor shall comply with the requirements of Schedule 20 (Acquired Rights Directive).

26. EXIT MANAGEMENT

- 26.1. In order to achieve an efficient and effective transition of the services provided under the Contract to the Authority on the expiry or earlier termination of the Contract, or on rundown of the services, the Contractor shall prepare and submit to the Authority for approval a draft Exit Management Plan within 3 months of Contract Award) The Exit Management Plan shall be delivered to the Authority in accordance with Schedule 16 (Contract Deliverables) and, once accepted by the Authority, shall be incorporated into the Contract at Schedule 21 (Exit Management Plan).
- 26.2. The Contractor shall note that in the event of expiry or earlier termination of this Contract for any reason, the Contractor shall ensure an efficient and effective transition of the services to the Authority or any new provider, whilst maintaining required outputs under the Contract; or an efficient and effective rundown of the services and closure of the Contract whilst maintaining any required outputs during the Exit Period.
- 26.3. The Exit Management Plan shall include the Contractor's proposal and methodology for achieving an efficient and effective transition of the services to the Authority or subsequent contractor. The areas to be addressed within the Exit Management Plan shall include, but not be limited to, the following areas:
 - 26.3.1. Acquired Rights Directive data/information.
 - 26.3.2. Management of Government Furnished Assets (GFA) held by the Contractor in accordance with DEFCON 601, DEFCON 611, DEFCON 694 and DEFSTAN 05-099
 - 26.3.3. Provision of Documentation such as reports

- 26.3.4. A list of all Contractor obligations against the Contract, inclusive of all continuing obligations, to include all work still outstanding as at the Expiry Date.
- 26.4. The Contractor shall review and if necessary, update the Exit Management Plan on an annual basis. Any revisions to the Exit Management Plan shall be subject to acceptance by the Authority prior to the updated Plan being formally incorporated at Schedule 21 by Formal Contract Amendment in accordance with DEFCON 503 (Edn 07/21) (Formal Amendments to Contract).
- 26.5. The Contractor shall appoint an appropriately qualified representative to manage the Exit Management Plan.
- 26.6. The Contractor shall update the Exit Management Plan on the earlier of:
- 26.6.1. twelve (12) months prior to the end of the Contract duration; or
 - 26.6.2. upon receipt of a notice of termination
- 26.7. All such updates must be approved by the Authority and shall include any changes which the Authority requires in order to achieve a controlled Contract exit and transition to a new provider or, if there is no new provider, to the Authority.
- 26.7.1. The Contractor shall ensure that they are able to implement the Exit Management Plan throughout the Contract duration.
 - 26.7.2. All costs incurred in developing, updating and implementing the Exit Management Plan shall be borne by the Contractor.

27. LOCAL LABOUR

The Authority has a commitment to social value in accordance with the Public Services (Social Value) Act 2013. The Contractor is required to consider the use of local labour within the South Atlantic Islands when sourcing personnel to meet contractual requirements.

47. The processes that apply to this Contract are:

Authorisation of Work and Tasking Process – Schedule of Requirements Items 4, 5 and 6

- 47.1 All work tasked under Items 4, 5 and 6 of the Schedule of Requirements shall utilise the Task Authorisation Form (TAF) at Schedule 14 and the process set out within this Condition 47.

Authorisation of Work

- 47.2 The provision of services under Items 4, 5 and 6 of the Schedule of Requirements shall be conducted against serially numbered tasks that have been authorised by the Authority. Each TAF raised shall be numbered sequentially commencing with Number 1. Such numbers shall be quoted in all associated correspondence and documentation.
- 47.3 Schedule 15 of the Contract (Schedule of Authorised Tasks) shall be amended, from time to time, to record all authorised TAFs under the Contract.

- 47.4 The Contractor shall not undertake any work under a TAF without prior approval of the Task at TAF Part F. The Authority shall not be responsible in any way whatsoever for any work undertaken or costs incurred prior to receipt by the Contractor of an authorised TAF.

Tasking Process

- 47.5 The Authority's authorisation of tasking activity to be provided under the Contract shall be subject to the following process:

- 47.5.1 The Authority's Project Manager, or their authorised representative will initiate tasks through completion of Part A and B of the TAF (Schedule 14), requesting the Contractor to provide a Firm Price proposal to satisfy the task requirement. The Contractor shall acknowledge receipt within 1 working day. For urgent tasks, the Contractor shall acknowledge receipt within 2 business hours.
- 47.5.2 The Contractor shall provide a Firm Price proposal through completion of Parts C and D of the TAF and submit such proposal to the Authority's Commercial Manager, or their authorised representative. Such proposal shall be provided to the Authority within 5 working days of a task being submitted, unless an alternative timeframe has been authorised by the Authority. For urgent tasks, the Contractor's proposal shall be provided within 1 working day.
- 47.5.3 Subject always to the acceptability of the Contractor's proposal to the Authority, authorisation for performance of the TAF will be provided by the Authority at TAF Part F. The Contractor shall not commence work until the TAF has been formally authorised by the Authority's Commercial Manager, or their authorised representative, through completion of Part F.
- 47.5.4 Upon completion of a TAF, the Contractor shall declare such completion to the Authority's Project Manager by completion of TAF Part G. Subject to the tasked activity having been completed to the Authority's Project Manager's, or their authorised representative's, satisfaction, evidenced by the Authority's completion of Part H, the Contractor may submit a claim for payment in accordance with the Contract.