



Ministry  
of Defence

[REDACTED]  
Naval Ships Support



[REDACTED]  
[REDACTED]



Defence Equipment and Support  
Ash2B, #3229  
MOD Abbey Wood,  
Bristol BS34 8JH



26<sup>th</sup> June 2020 Ref: 700577449

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Survey Supplies T/A Korec  
34-44 Mersey View,  
Blundellsands House,  
Brighton le Sands,  
Liverpool  
L22 6QB

Your Reference:

Our Reference: 700577449

Date: 26<sup>th</sup> June 2020

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Dear Sir/Madam,

Invitation To: Tender Reference Number: 700577449-Provision of Trimble Business Centre Licences

1. You are invited to tender for Provision of Trimble Business Centre Licences in accordance with the attached documentation.
2. The anticipated date for the contract award decision is 1<sup>st</sup> August 2020, please note that this is an indicative date and may change.
3. You must submit your Tender no later than 24<sup>th</sup> July 2020. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of your Tender when you submit it to the Authority.
4. Please confirm receipt of this tender to Mrs. [REDACTED] stated in the E-mail address [REDACTED].

Yours faithfully

[REDACTED]

NSS Assistant Commercial Officer

### Invited Suppliers

Supplier Name	Supplier Address	Contact Name	Contact Email
SURVEY SUPPLIES LTD	T/A KOREC BLUNDELLSANDS HOUSE GB L22 6QB	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

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## **Terms and Conditions**

**DEFFORM 47R**

**DEFFORM 47R**

**DEFFORM 47R (SC1A)**

Edition 12/16

**Invitation To Tender**

### **Standardised Contracting Template 1A - Special Notices and Instructions to Tenderers**

1. The contents of this invitation to tender must not be disclosed to un-authorised persons and must be used only for the purposes of tendering.
2. In addition to the Notices and Instructions specified elsewhere in the Invitation to Tender (ITT) the following shall also apply:

# SC1A ITT - Non-Competitive

Contents - Non-Comp

SC1A Non-Comp  
(Edn 05/18)

## Ministry of Defence Invitation to Tender (ITT) Less Complex Requirements (Non-Competitive)

<p>To: SURVEY SUPPLIES T/A KOREC</p> <p>Registered Address: 34-44 Mersey View, Blundellsands House, Brighton le Sands, Liverpool L22 6QB</p>	<p>ITT Reference No: 700577449 ITT Issue Date: 26<sup>th</sup> June 2020 Due for return by (Due Date): 24<sup>th</sup> July 2020</p>
	<p>From: [REDACTED]</p> <p>(MOD Commercial Branch)</p> <p>Address: MOD Abbey Wood (South), #3229   Ash 2b   Bristol   BS34 8JH MOD Commercial Officer: Naval Ships Support (NSS)</p> <p>Tel No: [REDACTED] Email: [REDACTED]</p>

### This ITT consists of:

1. Invitation to Tender – Less Complex Requirements – Non-Competitive Procurement (this document).
2. Annex A - Offer.
3. Annex B - Tender Evaluation Criteria - No Acceptable Price No Contract (NAPNOC)
4. Special Notices and Instructions to Tenderers (DEFFORM 47R (SC1A)) (one copy).
5. Purchase Order, including the Schedule of Requirements.
6. MOD Terms and Conditions for Less Complex Requirements
7. DEFFORM 28 ST - Tender return address Label.
8. DEFFORM 68 (see Clause 9 of Terms and Conditions)

### The Tenderer should return:

1. Completed Annex A to this ITT (one copy).
2. Completed Purchase Order, including the Schedule of Requirement (two copies).  
[Any other relevant documentation for requirement e.g. Technical Drawings, Safety Data Sheet, etc].

## Invitation to Tender - Non-Comp

### Notices To Tenderers

1. You are invited to tender, in accordance with the following Conditions, for the supply of Deliverables detailed in the accompanying ITT Material. This ITT has been issued only to the addressee; it is not an invitation to participate in competitive tendering. Any inferred reference to competitive tendering in this document is to be construed as a reference to a single tender.

**The issue of an ITT is not a commitment by the Secretary of State for Defence - 'the Authority' - to place an order as a result of the tendering exercise or at a later stage. Any expenditure, work or effort undertaken prior to an offer of Contract and acceptance thereof, is a matter solely for the commercial judgement of your company. The Authority reserves the right to:**

- a. undertake an iterative tendering process following receipt of the tender;
- b. waive or change the requirements of this ITT from time to time without prior (or any) notice being given by the Authority;
- c. seek clarification or documents in respect of a Tenderer's submission;
- d. disqualify any Tenderer that does not submit a compliant tender in accordance with the instructions in this ITT;
- e. disqualify any Tenderer that is guilty of serious misrepresentation in relation to its tender, expression of interest, the PQQ or the tender process;
- f. withdraw this ITT at any time, or to re-invite tenders on the same or any alternative basis;
- g. choose not to award any Contract as a result of the current procurement process; and / or
- h. make whatever changes it sees fit to the timetable, structure or content of the procurement process, depending on approvals processes or for any other reason.

### Publicity Announcement

2. The Tenderer is advised that the MOD may wish to publicise the award of the Contract for the requirement described in the Schedule of Requirements in the attached Purchase Order.

3. Any Tenderer who wishes to make a similar announcement, either coincident with or subsequent to the MOD's announcement, should contact the Authority's Representative (Commercial Officer) named in the Purchase Order. The content of any announcement a successful Tenderer may wish to make must be cleared in writing and in advance by the MOD Authority's Representative (Commercial Officer) named in the Purchase Order who shall liaise with the MOD Security branch responsible for clearance of publicity material for open publication.

4. If the notice inviting tenders was advertised in Contracts Finder, the MOD will publish the following information on the Contract awarded unless the MOD decides that there are specific and valid reasons for not doing so:

- a. Contractor's Name;
- b. Nature of the Deliverables to be supplied;
- c. Award criteria;
- d. Rationale for Contract award;
- e. Total price of the Contract awarded.

5. Under no circumstances should a successful Tenderer(s) confirm to any third party the fact of their acceptance of an offer of Contract prior to informing the MOD of their acceptance, and / or ahead of the MOD's announcement of the award of Contract.

### **Codes of Practice**

6. The attention of Tenderers is drawn to the agreements that have been reached by the MOD / Industry Commercial Policy Group (CPG) on Codes of Practice. The Codes of Practice are intended to demonstrate a commitment by the MOD and its suppliers to the establishment of better working relationships in the supply chain, based on openness and trust. The opportunity also exists for Tenderers to advertise any subcontract valued at over £10,000 in the Defence Contracts Online and further details can be obtained directly from:

BiP Solutions Ltd

Web address: 'www.contracts.mod.uk'

Tel No: 0141 270 7329

### **Submission of Tender**

7. Tenderers must:

- a. Sign and date Part A (but not Part C) ("Effective date") of the Offer and Acceptance box on both copies of the Purchase Order and return them both as part of their tender. The Terms and Conditions are to be kept by the Tenderer for their records.
- b. Complete the Consignor Box with the name and address of the Consignor where the MOD stipulates that the Deliverables will be transported by the MOD (as defined in the Purchase Order under the Transport Instructions box);
- c. Complete the Schedule to the Purchase Order by populating the Delivery Date column (if stated to do so), the Firm Price (£) Ex VAT sub columns (Per Item and Total inc. packing), finally completing the Total Firm Price at the bottom of the Schedule.
- d. Sign and return one copy of the tender form at Annex A to this Invitation to Tender – Less Complex Requirements – Non-Competitive Procurement, as part of their tender.
- e. Provide any other information requested in this Invitation to Tender.

8. Your tender is to be submitted in the English language, in a sealed package (e.g. envelope / box), bearing the enclosed label (DEFFORM 28 ST), to the address shown thereon, for receipt no later than the date and time stated above. The outer packaging must clearly distinguish between commercial and technical tenders. For health and safety reasons no individual package should weigh more than 11 kilos.

9. **The envelope bearing the DEFFORM 28 ST label will not be opened until the date and time shown (the tender return date).** The Authority cannot undertake to give consideration to any tender submitted in a different manner (for example, by telephone, facsimile or email) or any tender not received on time. Where the Tenderer is required to provide electronic copies of tenders, these must be provided with the tender(s) to the Tender Board.

10. Any request for an extension of the period for tendering must be received at least four (4) Business Days before the tender return date. Any extension will be at the sole discretion of the Authority. Correspondence connected with your tender which requires attention before the tender return date, or communications stating that no tender will be submitted, should be sent in a separate envelope bearing no external reference to the ITT Reference No or return date, addressed to the Authority's Representative (Commercial) as stated above.

11. **No useful purpose is served by enquiring about the result of this ITT.** You will be notified of the Authority's decision as early as possible.

### **Formation of Contract**

12. Once the evaluation process has been completed, the Tenderer will be notified of the outcome of the tender process. The Authority's Representative (Commercial) stipulated on the Purchase Order will accept a successful tender by signing and dating Part B of the Offer and Acceptance box of the Purchase Order and dating Part C to signify the Effective Date i.e. the date of the Contract. The Effective Date shall be no earlier than the date of acceptance of the tender and shall allow a reasonable time for the acceptance to be communicated to the Contractor. One copy of the completed Purchase Order will then be returned to the Contractor to be attached to their copy of the Terms and Conditions.

### **Instruction to Tenderers**

1. **Small and Medium-sized Enterprises** The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) initiative; its ambitious target is that every £1 in every £3 that the Government spends should be with small businesses by 2020. Our goal is that 25% of MOD spending should be spent with SMEs by 2020; this applies to the money which the MOD spends directly with SMEs and through the supply chain. The Authority uses the European Commission definition of an SME. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their sub-contractors are encouraged to make their own commitment and register with the Prompt Payment Code. Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative. Information on the Authority's purchasing arrangements, our commercial policies and our SME policy can be found at Gov.UK.

2. **Price** The prices quoted for the Deliverables and Packaging must be set out in strict

accordance with the requirements of the Schedule to the Purchase Order. The Tenderer shall include in their tender any additional information regarding their quotation price breakdown, equality of information etc. as requested elsewhere in this ITT Material

3. **Orders for Parts of the Tender** The Authority reserves the right, **unless the Tenderer expressly states that parts of the tender may not be accepted separately in their tender**, to order some or all of the Deliverables stated in the Schedule to the Purchase Order.

4. **Alternative Conditions** The Tenderer shall comply with the notices and instructions set out in this ITT and submit a tender compliant with the MOD Terms and Conditions for Less Complex Requirements. Any offer made subject to additional or alternative contractual conditions will not be considered and will be rejected on the grounds of those conditions alone.

5. **Tender Evaluation** The tender evaluation shall be carried out in accordance with the Evaluation Criteria stated in the ITT tender documentation. **The Authority can only evaluate those things stated in your tender.**

6. **Alterations to Purchase Order** Any alteration to the Purchase Order suggested by the Tenderer e.g. an alternative Delivery offer, should be effected by striking through the original entry and inserting the alternative adjacent to it. The Tenderer's attention is, however, drawn to paragraphs 3 to 5 above.

#### 7. **Completion of Tender**

a. In the event of a Deliverable appearing more than once in the attached Schedule of Requirements, whether separately or as part of an assembly, the Tenderer is requested to quote on the basis of the total quantity for that Deliverable.

b. The Tenderer should ensure that their tender is clear and in a form which will allow the Authority to take copies for evaluation purposes.

8. **Tenders for Selected Deliverables** Tenders need not necessarily be for all the Deliverables listed in the Schedule to the Purchase Order. The words "No Tender" should be inserted in the price column against items for which no offer is made.

9. **Bid costs** The Tenderer will bear all costs associated with preparing and submitting their Tender. If the Tender process is terminated or amended by the Authority, the Tenderer will not be reimbursed.

#### 10. **ITT Material**

a. ITT Material means information (including for example, drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings, in whatever form or medium, patterns and samples) issued to you by the Authority or on its behalf, or to which you have been given access, for the purposes of responding to this ITT. ITT Material remains the property of the Authority or other owners and is released solely for the purpose of tendering. The Tenderer shall notify the Authority's Representative (Commercial Officer) without delay if any additional ITT Material is required for the purpose of tendering. The Tenderer shall be responsible for the safe

custody and due return of ITT Material, and shall be responsible for all loss or damage sustained while in their care, and until re-delivered to the Authority.

b. **Return of ITT Material** In the event that a recipient of ITT Material decides not to participate in the submission of a tender, the ITT Material shall be returned to its place of issue without delay. If a tender is submitted to the Authority, the ITT Material may be retained by the Tenderer until the result of the competition is known. In the event that the Tenderer's bid is unsuccessful the ITT Material shall be returned to its place of issue without delay at the prospective Tenderers cost.

c. **Intellectual Property Rights in ITT Material** The Intellectual Property Rights in ITT Material may belong to the Authority or a third party. The ITT Material may only be used for the purpose of responding to this ITT and shall not be copied or disclosed to anyone other than employees of the Tenderer involved in the preparation of the tender, without the prior written approval of the Authority. If the Tenderer discloses the ITT Material other than to employees involved in the tender preparation or uses the ITT Material other than for the purpose of tendering, the Authority, or the third party owner, may suffer damage for which compensation may be sought from the Tenderer.

d. **Confidentiality Agreements** Some or all of the ITT Material issued in connection with this ITT may already be the subject of Confidentiality Agreements. The provisions of such agreements are in addition to, and not in substitution for, any obligations arising from receipt of or access to ITT Material under the terms of this ITT, and the provisions of sub-paragraphs 10.a - c above.

## 11. **Samples**

a. Where it is indicated in Annex B that samples may be required for evaluation, the Tenderer must be prepared to submit them without charge. Samples should be clearly labelled with the following particulars:

- (1) The Tenderer's name and address.
- (2) The ITT Reference Number and tender return date.
- (3) Description and Item Number as shown in the Schedule to the Purchase Order.

b. The Authority shall retain all samples for 12 months. After this period the Authority shall destroy the samples unless you specifically state you require their return. The sample of any subsequent contracts shall be kept indefinitely.

## 12. **Notification of Inventions etc.**

a. The Tenderer acknowledges that their prices shall include the use of any intellectual property rights which they own or control to the extent that their use is required for the performance of any resultant Contract. The Tenderer also acknowledges that their prices include subsequent use by the Authority of anything delivered under the Contract.

b. In their tender the Tenderer shall notify the Authority of:

(1) any invention or design the subject of patent or registered design rights (or application therefore) of which the Tenderer is aware, and;

(2) any other restriction (including any export requirement or restriction) as to disclosure or use or obligation to make payments in respect of intellectual property (including technical information) to which the Tenderer is subject, and;

(3) any allegation of infringement of intellectual property rights made against the Tenderer;

which pertains to or appears to be relevant to the performance of any resultant Contract or to subsequent use by the Authority of anything required to be done or delivered under any resultant Contract.

c. The Tenderer shall, at the request of the Authority, give the Authority particulars of every restriction and obligation referred to in sub-paragraph 12.b.(2) above.

d. If the information required under this paragraph 12 has been provided previously, the Tenderer may satisfy these requirements by giving details of the previous notification.

13. **The Montreal Protocol** As a signatory to the Montreal Protocol on Substances that deplete the Ozone Layer, Her Majesty's Government is committed to the reduction of the production and consumption of those substances controlled under the Protocol. The Tenderer must therefore state whether their response will involve the use of any or all of the substances outlined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer. A full version of the regulations including the comprehensive list of controlled substances can be found at:

[http://ozone.unep.org/new\\_site/en/montreal\\_protocol.php](http://ozone.unep.org/new_site/en/montreal_protocol.php)

The Tenderer must also provide full details of that use, including where this relates to packaging) or submit a "NIL RETURN".

14. **Hazardous Deliverables and Substances** It is a condition of this ITT that where the ITT calls for, or the Tenderer proposes, the use of Hazardous Deliverables or substances, the Tenderer shall provide with their tender a completed Safety Data Sheet in accordance with Clause 9 of the Terms and Conditions. Failure to comply fully with this condition may result in the tender being deemed non-compliant thus rendering it ineligible for further consideration by the Authority.

15. **Elimination Of Asbestos** It is a condition of this ITT that the Deliverables shall not incorporate asbestos of any kind. The Tenderer will confirm this by signing and returning the tender form at Annex A to this ITT as part of their tender.

## 16. **Transparency, Freedom of Information and Environmental Information Regulations**

a. Tenderers should be aware that, if they are awarded the Contract, the content of the Contract may be published by the MOD to the general public in line with government policy set out in the Prime Minister's letter of May 2010 (<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>).

b. Before publishing the Contract, the MOD will redact any information which would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").

c. The FOIA and the EIR provide a more general statutory right of access to information held by or on behalf of public authorities, including information provided by third parties such as suppliers. This right of access is subject to a number of exemptions, including confidential information and commercially sensitive information. Further details of MOD policy on FOIA and EIR can be found on the Acquisition Operating Framework (<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm> click on "Commercial Toolkit" then "MOD Commercial Management" then "Freedom of Information").

d. In order to assist the MOD in applying the exemptions in the FOIA and the EIR, Tenderers should complete the appropriate Tenderer's Commercially Sensitive Information box in the Purchase Order, explaining which parts of their tender they consider to be sensitive or confidential. Tenderers are also requested to include in the box the details of a named individual who may be contacted with regard to this information.

e. Tenderers should note that, while their views will be taken into consideration, the ultimate decision whether to publish or disclose information provided to the MOD lies with the MOD. Tenderers are advised to give as much detail as possible on the Purchase Order. It is highly unlikely that a contract will be exempt from disclosure in its entirety. Should the MOD decide to publish or disclose information against the wishes of a Tenderer, the Tenderer will be given prior notification.

17. **Consultation with Credit Reference Agencies** The Authority may consult credit reference agencies to assess the creditworthiness of a Tenderer. Information on creditworthiness may be used by the MOD to support and influence decisions to enter into business with a Tenderer.

18. **Canvassing** Any Tenderer who directly or indirectly seeks to persuade any officer, member, employee, or agent of the MOD concerning this procurement except by responding to this ITT or who directly or indirectly obtains or attempts to obtain information from any such officer, member, employee or agent of the MOD concerning any other Tenderer, tender or proposed tender concerning this procurement before the end of the selection process will be disqualified from consideration for this procurement.

19. **Conflicts of Interest**

a. MOD policy states that it is sometimes in the MOD's wider business interests to allow suppliers to operate on both the client and supply side. Conflicts of Interest (Col) can occur outside of direct commercial relationships between the MOD and its suppliers and therefore all personnel involved in acquisition (both Authority and Tenderer) should be familiar with the Conflicts of Interest Commercial Policy Statement (CPS).

b. Accordingly, Tenderers shall notify immediately the Authority of any current or potential Col relating to the requirement and shall give particulars of every instance.

c. Where the Authority permits the Tenderer or any entity within the Tenderer's potential supply chain or any entity providing advisory services to the Tenderer or its potential supply chain to work on both the client and supply side, the Contractor shall, as a legally binding agreement or Condition of Contract, be required to:

(1) Adopt a formally agreed, legally binding, Compliance Regime (CR) between the Authority and the Contractor. This shall include but not be limited to:

(a) Manner of operation and management;

(b) Roles and responsibilities;

(c) Standards for integrity and fair dealing;

(d) Levels of access to and protection of competitors' sensitive information and Government Furnished Information;

(e) Confidentiality / Non-Disclosure Agreements (NDA's)(e.g. DEFFORM 702);

(f) The Authority rights of audit;

(g) Physical and Managerial separation.

(2) Identify potential or actual Conflicts of Interest;

(3) Investigate breaches.

20. **Collusive Behaviour** The Tenderer's attention is drawn to the requirements of the Competition Act 1998, Part 1. Any Tenderer found to have been part of a 'Concerted Practice' or 'Agreement', the purpose of which was to prevent, restrict or distort competition, shall be disqualified from consideration from this procurement. Disqualification will be without prejudice to any to any civil remedy available to the Authority or criminal liability which the conduct of the Tenderer may attract.

21. **Bribery** Any Tenderer who offers to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done, any act or omission concerning this tender shall be disqualified. Disqualification will be without prejudice to any to any civil remedy available to the Authority or criminal liability which the conduct of the Tenderer may attract.

22. **Authority Remedies for Breach of Contract** Tenderers should be aware of the contractual remedies set out at Clause 17 of the Terms and Conditions of the Contract which may apply in the event of a breach of Contract by the Contractor. Damages for breach of contract are not limited under the contract. However Tenderers should also note under Clause 17 that in exercising its rights and remedies under the contract the Authority must act in a reasonable and proportionate manner having regard to the nature and consequences of the breach of contract. If Tenderers are unsure about the potential liability under the contract, they should seek advice as appropriate.

23. **Cyber Essentials Accreditation** For all new requirements advertised from 1st January 2016 which entail the transfer of MOD identifiable information from customer to supplier or the generation of information by a supplier specifically in support of the MOD contract, MOD will require suppliers to have a Cyber Essentials certificate by the contract start date at the latest, and for it to be renewed annually. This requirement must be flowed down the supply chain.

In this context 'information' 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.

Please notify the Authority as soon as you become aware of any issues with Supply Chain ability to comply with Cyber Essentials.

**THE TENDERER MUST SIGN AND RETURN ONE COPY OF SC1A ITT Non-Comp (Annex A) WITH THEIR TENDER**

SC1A ITT Ref No 700577499

## Ministry of Defence

## TENDER

**To the Secretary of State for Defence (hereinafter called "the Authority")**

The undersigned Tenderer having read the Invitation to Tender – Less Complex Requirements – Non-Competitive Procurement and accompanying Terms and Conditions offers to supply the Deliverables (to the extent which the Authority may determine in ordering the Deliverables ) at the price or prices and at the time or times stated and in accordance with any drawings and / or specifications stated in the Purchase Order and subject the above mentioned MOD Conditions..

The following additional information is provided:

<b>Notification of Inventions</b>
Please state below details invention or design, other restriction and any allegation of infringement specified in Paragraph 12.b and 12.d (continue on a separate sheet if necessary).
<b>The Montreal Protocol</b>
Please state below details of the use of substances specified in Paragraph 13, or state "NIL RETURN" (continue on a separate sheet if necessary).
<b>Asbestos</b>
By signing this Offer, the Contractor confirms that the Deliverables do not incorporate asbestos as specified in Paragraph 15
<b>Premises where Contract will be performed (if applicable)</b>
The Deliverables, or any part of them supplied under this Contract resulting from this tender will be manufactured and or bought in from premises detailed below:
<b>Value of Tender (excluding VAT)</b>
Total cost of Deliverables, including packaging, required computed at the Tenderer's quoted price    £ <span style="background-color: black; color: black;">██████████</span>
Total value of tender (to be repeated below in WORDS)    £ <span style="background-color: black; color: black;">██████████</span>
(WORDS:    )
<b>Value Added Tax</b>
If registered for Value Added Tax purposes, please insert

a. Registration No

b. Total amount of Value Added Tax payable on this tender (at current rate(s)) £ [REDACTED]

**Transparency**

Should the Tenderer be awarded a Contract resulting from this tender, it understands that the Authority may publish the content of the Contract to the general public. The Commercially Sensitive Information which forms part of the Purchase Order is completed to assist the Authority in applying the appropriate exemptions in the FOIA and the EIR.

Dated this 8<sup>TH</sup> day of SEPTEMBER Year 2020

**Signature:** **In the capacity of**  
(State official position e.g. Director, Manager, Secretary etc.)

**Name:** (in BLOCK CAPITALS)

[REDACTED]

**duly authorised to sign this tender for and on behalf of:**

Survey Supplies Ltd T/A KOREC

(Tenderer's Name)

**Ministry of Defence  
Tender Evaluation Criteria**

Tender Evaluation Criteria: No Acceptable Price No Contract (NAPNOC)

The firm price will:

- Be agreed before the contract is placed and before any work is Authorised or any commitment made by the MOD.
- Be affordable in relation to the project`s financial approvals.
- Be reviewed by the Authority if the Price represents Value for Money

# Standardised Contracting Terms

## SC1A

### 1 Definitions - In the Contract:

**The Authority** means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown;

**Business Day** means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

**Contract** means the agreement concluded between the Authority and the Contractor, including all terms and conditions, associated purchase order, specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2.c;

**Contractor** means the person, firm or company specified as such in the purchase order;

**Contractor Commercially Sensitive Information** means the information listed as such in the purchase order, which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

**Contractor Deliverables** means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule to the purchase order;

**Effective Date of Contract** means the date stated on the purchase order or, if there is no such date stated, the date upon which both Parties have signed the purchase order;

**Firm Price** means a price excluding Value Added Tax (VAT) which is not subject to variation;

**Hazardous Contractor Deliverable** means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

**Legislation** means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.

**Notices** means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

**Parties** means the Contractor and the Authority, and Party shall be construed accordingly;

**Transparency Information** 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.

### 2 General

a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.

b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.

c. If there is any inconsistency between these terms and conditions and the purchase order or the documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:

- (1) the terms and conditions;
  - (2) the purchase order; and
  - (3) the documents expressly referred to in the purchase order.
- d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
  - e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.
  - f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
  - g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

### **3 Application of Conditions**

- a. The purchase order, these terms and conditions and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.
- b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

### **4 Disclosure of Information**

Disclosure of information under the Contract shall be managed in accordance with DEFCON 531 (SC1).

### **5 Transparency**

- a. Subject to Clause 5.b, but notwithstanding Clause 4, 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 5.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, including the Contractor Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 5.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 Clause 5 shall affect the Contractor's rights at law.

### **6 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 the purchase order;
  - (4) marked with the number of the Contract; and
  - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the purchase order, 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.

## **7 Intellectual Property**

- a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.
- b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim

## **8 Supply of Contractor Deliverables and Quality Assurance**

- a. This Contract comes into effect on the Effective Date of Contract.
- b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Schedule to the purchase order.
- c. The Contractor shall ensure that the Contractor Deliverables:
  - (1) correspond with the specification;
  - (2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and
  - (3) comply with any applicable Quality Assurance Requirements specified in the purchase order.
- d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the

Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

## **9 Supply of Hazardous Contractor Deliverables**

a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 9. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Schedule to the purchase order:

- (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
- (2) the International Maritime Dangerous Goods (IMDG) Code;
- (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
- (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

b. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

c. As soon as possible and in any event within the period specified in the purchase order (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority's representatives in the manner and format prescribed in the purchase order:

- (1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and
- (2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at Clause 9.d, which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

d. Safety Data Sheets if required under Clause 9.c shall be provided in accordance with the REACH Regulations (EC) No 1907/2006 and any additional information required by the Health and Safety at Work etc. Act 1974 and shall contain:

- (1) Information required by the Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations 2009 and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable) or any replacement thereof; and
- (2) where the Hazardous Contractor Deliverable is, contains or embodies a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any isotope); and
- (3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed.

e. The Contractor shall retain its own copies of the Safety Data Sheets provided to the Authority in accordance with Clause 9.d for 4 years after the end of the Contract and shall make them available to the Authority's representatives on request.

f. Nothing in this Clause 9 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

## **10 Delivery / Collection**

a. The purchase order shall specify whether the Contractor Deliverables are to be delivered to the consignee by the Contractor or collected from the consignor by the Authority.

b. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.

c. The Authority shall be deemed to have accepted the Contractor Deliverables thirty (30) days after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

## **11 Marking of Contractor Deliverables**

a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in the purchase order. or if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number shown in the Contract.

b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

c. The marking shall include any serial numbers allocated to the Contractor Deliverable.

d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

## **12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)**

The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the purchase order and Def Stan 81-041 (Part 1 and Part 6).

## **13 Progress Monitoring, Meetings and Reports**

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the purchase order and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings.

## **14 Payment**

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 14b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

b. Where the Contractor submits an invoice to the Authority in accordance with clause 14a, the Authority will consider and verify that invoice in a timely fashion.

c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

d. Where the Authority fails to comply with clause 14b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 14c after a reasonable time has passed.

e. The approval for payment of a valid and undisputed invoice by the Authority 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 this Contract.

f. 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 other Government Department.

## **15 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 15.a the dispute shall be referred to arbitration and 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.

## **16 Termination for 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:

- a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (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;
  - (2) commits or has committed any prohibited act or any 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 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 terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- b. In exercising its rights or remedies to terminate the Contract under Clause 16.a. 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.
- c. Where the Contract has been terminated under Clause 16.a.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.

## **17 Material Breach**

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract. Where the Authority has terminated the Contract under Clause 17 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract.

## 18 Insolvency

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

## 19 Limitation of Contractor's Liability

- a. Subject to Clause 19.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).
- b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:
  - (1) for:
    - a. any liquidated damages (to the extent expressly provided for under this Contract);
    - b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor's failure to perform or under-perform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under this Contract);
    - c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
    - d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;
  - (2) under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the contract;
  - (3) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;
  - (4) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;
  - (5) in relation to the termination of this Contract on the basis of abandonment by the Contractor;
  - (6) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - (7) for any other liability which cannot be limited or excluded under general (including statute and common) law.
- c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

## PURCHASE ORDER

**Contract No:** 700577449

**Contract Name:** Provision of Trimble Business Centre Licences

**Dated:** 26<sup>th</sup> June 2020

Supply the Deliverables described in the Schedule to this Purchase Order, subject to the attached MOD Terms and Conditions for Less Complex Requirements (up to £118,133) (Edn 02/18)

<b>Contractor</b>	<b>Quality Assurance Requirement (Clause 8)</b>
Name: SURVEY SUPPLIES T/A KOREC  Registered Address: 34-44 Mersey View, Blundellsands House, Brighton le Sands, Liverpool L22 6QB	Other Quality Assurance Requirements DEFCON 627 - (Edn. 12/10) - Quality Assurance - Requirement for a Certificate of Conformity

<b>Consignor (if different from Contractor's registered address)</b>	<b>Transport Instructions (Clause 10)</b>
<b>Name:</b> N/A  <b>Address:</b> N/A	Select method of transport of Deliverables  To be Delivered by the Contractor  HM Equipment Store M056 Building, HM naval base Devonport PL2 2BG  Each consignment of the Deliverables shall be accompanied by a delivery note.

Progress Meetings (Clause 13)	Progress Reports (Clause 13)
<p>The Contractor shall be required to attend the following meetings:</p> <p>Subject: N/A</p> <p>Frequency: N/A</p> <p>Location: N/A</p>	<p>The Contractor is required to submit the following Reports:</p> <p>Subject: N/A</p> <p>Frequency: N/A</p> <p>Method of Delivery: N/A</p> <p>Delivery Address: N/A</p>

Payment (Clause 14)
<p><b>Payment is to be enabled by CP&amp;F.</b></p>

Forms and Documentation	Supply of Hazardous Deliverables (Clause 9)
<p>Forms can be obtained from the following websites:</p> <p><a href="https://www.aof.mod.uk/aofcontent/tactical/toolkit">https://www.aof.mod.uk/aofcontent/tactical/toolkit</a> (Registration is required).</p> <p><a href="https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing">https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing</a></p> <p><a href="https://www.dstan.mod.uk/">https://www.dstan.mod.uk/</a> (Registration is required).</p> <p>The MOD Forms and Documentation referred to in the Conditions are available free of charge from:</p> <p>Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site Lower Arcnott Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)</p>	<p>A completed DEFFORM 68 and, if applicable, Safety Data Sheet(s) are to be provided by email with attachment(s) in Adobe PDF or MS WORD format to:</p> <p>a. The Commercial Officer detailed in the Purchase Order, and</p> <p>b. <a href="mailto:DSA-DLSR-MovTpt-DGHSIS@mod.uk">DSA-DLSR-MovTpt-DGHSIS@mod.uk</a></p> <p>by the following date: N/A</p> <p>or if only hardcopy is available to the addresses below:</p> <p>Hazardous Stores Information System (HSIS) Defence Safety Authority (DSA) Movement Transport Safety Regulator (MTSR) Hazel Building Level 1, #H019 MOD Abbey Wood (North) Bristol BS34 8QW</p>

Applications via email:  
[DESLCSLS-OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk)

If you require this document in a different format (i.e. in a larger font) please contact the Authority's Representative (Commercial Officer), detailed below.

**Contractor Commercially Sensitive Information (Clause 5). Not to be published.**

**Description of Contractor's Commercially Sensitive Information:**

N/A

**Cross reference to location of sensitive information:**

N/A

**Explanation of Sensitivity:**

N/A

**Details of potential harm resulting from disclosure:**

N/A

**Period of Confidence (if Applicable):**

N/A

**Contact Details for Transparency / Freedom of Information matters:**

**Name:** [REDACTED]

**Position:** Regional Sales Director

**Address:** Blundellsands House, 34-44 Mersey View, Brighton le Sands, Liverpool, L22 6QB

**Telephone Number:** [REDACTED]

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

**Offer and Acceptance**

A) The Purchase Order constitutes an offer by the Contractor to supply the Deliverables. This is open for acceptance by the Authority for 10 days from the date of signature. By signing the Purchase Order, the Contractor agrees to be bound by the attached Terms and Conditions for Less Complex Requirements (Up to £118,133) (Edn 02/18).

Name (Block Capitals): [REDACTED]

Position: REGIONAL SALES DIRECTOR  
For and on behalf of the Contractor

Authorised Signatory .....

Date: 08/09/2020

B) Acceptance

Name (Block Capitals): [REDACTED]

Position:  
For and on behalf of the Authority

Authorised Signatory .....

Date: 09/09/2020

**C) Effective Date of Contract: 19/09/2020**

**Schedule of requirements for the Provision of Trimble Business Centre**

Item Number	Specification	Delivery Date	Total quantity	Firm Price (£) Ex VAT	
				Per Item	Total Inc: Packaging (and delivery if specified in purchase order)
1	Annual Trimble Business Centre licences	19 September 2020	8	██████	██████████
2	Annual Trimble Business Centre licenses	19 September 2021	8	██████	██████████
3	Annual Trimble Business Centre licenses	19 September 2022	8	██████	██████████
				Total Firm Price	██████████

## **20. Project specific DEFCONs and DEFCON SC variants that apply to this Contract:**

**DEFCON 502 (SC1)** - (Edn. 12/16) - Specifications Changes

**DEFCON 503 (SC1)** - (SC1) (Edn. 12/16) - Formal Amendments To Contract

**DEFCON 531 (SC1)** - (Edn. 06/17) - Disclosure of Information

**DEFCON 534** - (Edn. 06/17) - Subcontracting and Prompt Payment

**DEFCON 537** - (Edn. 06/02) - Rights of Third Parties

**DEFCON 538** - (Edn. 06/02) - Severability

**DEFCON 532A** - (Edn. 04/20) -Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

**DEFCON 532B** - (Edn. 04/20) - Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)

**DEFCON 566** - (Edn. 12/18) - Change of Control of Contractor

**DEFCON 658 (SC1)** - (SC1) (Edn. 11/17) - Cyber

**DEFCON 660** - (Edn. 12/15) - Official-Sensitive Security Requirements

**DEFCON 658 - Cyber Risk Profile - Low**

Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Low, as defined in Def Stan 05-138.

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This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

<b>Data Controller</b>	The Data Controller is the Secretary of State for Defence (the Authority). The Personal Data will be provided by: <i>Royal Navy Hydrographic and Patrol</i>
<b>Data Processor</b>	The Data Processor is the Contractor. The Personal Data will be processed at: <i>[insert location(s), address and contact details]</i>
<b>Data Subjects</b>	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: <i>[please specify]</i> <i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
<b>Categories of Data</b>	The Personal Data to be processed under the Contract concern the following categories of data: <i>[please specify]</i> <i>[Examples include name, address, telephone number, medical records etc]</i>
<b>Special Categories of data (if appropriate)</b>	The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>[A Special Category of Personal Data is anything that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or sexual orientation or genetic or biometric data]</i>
<b>Subject matter of the processing</b>	The processing activities to be performed under the contract are as follows: <i>[please specify]</i> <i>[This should be a high-level, short description of what processing will be taking place and its overall outcome i.e. its subject matter]</i>
<b>Nature and the purposes of the Processing</b>	The Personal Data to be processed under the Contract will be processed as follows: <i>[please specify]</i> <i>[The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether</i>

	<i>by automated means or not) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
<b>Technical and organisational measures</b>	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: <i>[please specify]</i> <i>[Provide an overview of the measures described in the System Requirements, Statement of Work and/or the controls required in accordance with the Cyber Risk Profile relevant to the Contract, as detailed in Annex A to Def Stan 05-138. Examples include anonymisation, authorised access, data processed on closed/restricted systems]</i>
<b>Instructions for disposal of Personal Data</b>	The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): <i>[please specify]</i> <i>[Describe how long the data will be retained for and how it will be returned or destroyed]</i>
<b>Date from which Personal Data is to be processed</b>	Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: <i>[please specify if applicable]</i>

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

## **General Conditions**

### **Third Party IPR Authorisation**

#### **AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

## DEFFORM 701

### HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE PURCHASED BY THE SECRETARY OF STATE FOR DEFENCE

This Agreement is made this 26<sup>th</sup> day of June in the year 2020

#### BETWEEN

The Secretary of State for Defence, a corporation sole, (afterwards referred to as the AUTHORITY) as represented by the Directorate of Intellectual Property Rights, Poplar 2a #2218, MOD Abbey Wood, Bristol BS34 8JH

#### AND

*SURVEY SUPPLIES T/A KOREC, registration number 00965862 corporate address: 34-44 Mersey View, Blundellsands House, Brighton le Sands, Liverpool, L22 6QB (afterwards referred to as the COMPANY);*

each being referred to as a "Party" and collectively as the "Parties".

#### BACKGROUND

- I. The AUTHORITY wishes to agree standard terms of licence with the COMPANY which will apply to "Commercial Software" products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and
- II. The COMPANY is prepared to agree standard terms of licence with the AUTHORITY in order to facilitate sales of Commercial Software to the AUTHORITY.

*For the purpose of this Agreement "Commercial Software" means software available commercially including that software modified on sale to suit the requirements of a customer.*

#### THE HEAD AGREEMENT

1. The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the "Annex"), as the standard terms of licence for the procurement of Commercial Software by the AUTHORITY from the COMPANY and from any of its wholly owned subsidiaries for which the COMPANY is entitled to make this Head Agreement. This shall not imply that either Party may not propose other conditions for any particular licence or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.
2. Each software licence which is to be procured subject to the standard terms of licence set out in the Annex, shall be established by a schedule (the "Schedule") which incorporates those terms by making reference to this Head Agreement and the Annex. Each licence so concluded shall be legally separate from this Head Agreement.
3. Each Schedule will take the format provided in the Attachment to the Annex. Individual Schedules may include special conditions adding to, varying, or setting aside any condition set out in the Annex and in the event of any conflict between the terms of the Annex and the special conditions of a Schedule the latter shall prevail.
4. Either Party shall be entitled to terminate this Head Agreement at any time on written notice to the other Party but the termination shall not vary the conditions of or terminate any extant Licences.
5. This Head Agreement shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the jurisdiction of the Courts of England. Other jurisdictions may apply solely for the purpose of giving effect to this Agreement and for the

enforcement of any judgement, order or award given under English jurisdiction.

Signed for and on behalf of the Secretary of State for Defence

.....  
*[Print name]* ... [REDACTED]

In the capacity of .....*[Insert capacity of signatory]*

Signed for and on behalf of the COMPANY *[Insert name of company]*  
Survey Supplies Ltd T/A KOREC

.....  
*[Print name]*..... [REDACTED]

In the capacity of ... Regional Sales Director.....*[Insert capacity of signatory]*

## **DEFFORM 701 Annex**

### **ANNEX TO THE HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE BETWEEN THE SECRETARY OF STATE FOR DEFENCE AND SURVEY SUPPLIES T/A KOREC DATED 26<sup>th</sup> June 2020**

#### **AGREED STANDARD CONDITIONS**

##### **1. DEFINITIONS**

- 1.1. "AUTHORITY" shall mean the Secretary of State for Defence.
- 1.2. "LICENSOR" shall mean the Company identified in the Head Agreement or the wholly owned subsidiary of the Company identified in the Schedule as being the Party granting the Licence to the AUTHORITY.
- 1.3. "Licensed Software" means the computer programs listed in Part I of the Schedule together with any user documentation, update programs and anything else furnished to the AUTHORITY by the LICENSOR under the Licence in connection with those listed programs, and any portion and copy of any of them.
- 1.4. "Use" (or "to Use") in relation to the Licensed Software means copying the software from a store unit or medium into equipment, customising it within its existing functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye-readable form.
- 1.5. "Designated Equipment" means that equipment in respect of which Use of the Licensed Software is licensed. It shall be the equipment specified in Part II of the Schedule unless changed to alternative equipment in accordance with the provisions of Clauses 2.3 or 2.4.
- 1.6. "Designated Site" means that site for which the Licensed Software is licensed. It shall be the site specified at Part III of the Schedule unless changed to an alternative site in accordance with the provisions of Clause 2.3.
- 1.7. "Licence" means the rights granted by the LICENSOR to the AUTHORITY in respect of the Licensed Software and all the conditions associated with it, as set out in the Standard Conditions in combination with a relevant Schedule.
- 1.8. "Schedule" means a schedule to the Head Agreement (in the format provided in the Attachment to this Annex) established by signature of the AUTHORITY and the LICENSOR, under which the LICENSOR undertakes to supply the Licensed Software for Use by the AUTHORITY under the conditions of the Licence. Each Schedule, in combination with these Standard Conditions, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.
- 1.9. "Standard Conditions" means the conditions set out in this Annex to the Head Agreement, comprising Clauses 1 to 15.
- 1.10. "Special Conditions" means those conditions (if any) specified in Part VIII of the Schedule.

##### **2. LICENCE GRANT**

- 2.1. The AUTHORITY may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the AUTHORITY.
- 2.2. The AUTHORITY may allow contractors of the AUTHORITY and their sub-contractors to Use the Licensed Software on the Designated Equipment at the Designated Site on AUTHORITY contracts only, provided that the AUTHORITY ensures or procures that those contractors and sub-contractors are bound by the conditions of the Licence and that, unless prevented by security considerations, the AUTHORITY shall notify the LICENSOR of the identity of those contractors or sub-contractors as soon as is reasonably practical. The AUTHORITY shall not charge for that Use.
- 2.3. The AUTHORITY may specify alternative Designated Equipment or an alternative Designated Site by notification to the LICENSOR, in which case Clause 2.1 shall apply only to the alternative Designated Equipment or Designated Site as notified. However, in the event that the alternative

Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated Equipment the LICENSOR may require the AUTHORITY to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licensed Software on the existing and alternative Designated Equipment respectively in the LICENSOR's price list current at the time when the AUTHORITY has specified the alternative Designated Equipment.

- 2.4. The AUTHORITY may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the LICENSOR.
- 2.5. Notwithstanding the above, the AUTHORITY may copy the Licensed Software in machine-readable form for back-up purposes for Use of the Licensed Software. The AUTHORITY may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the LICENSOR.

### **3. DELIVERY AND ACCEPTANCE**

- 3.1. The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the AUTHORITY.
- 3.2. The LICENSOR or the AUTHORITY as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the AUTHORITY.
- 3.3. The AUTHORITY may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the AUTHORITY) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The AUTHORITY shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.
- 3.4. If the AUTHORITY rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the AUTHORITY shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.
- 3.5. The AUTHORITY and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Clause 3.3.

### **4. PAYMENT**

- 4.1. The LICENSOR will invoice the AUTHORITY for the agreed licence fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the AUTHORITY of the Licensed Software.
- 4.2. The AUTHORITY shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.

### **5. CONFIDENTIALITY**

- 5.1. Subject to Clause 5.2 and except as otherwise agreed in writing, the AUTHORITY and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:
  - a. the Licensed Software;
  - b. details of the AUTHORITY's use and application of the Licensed Software;
  - c. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

the obligation for b. and c. relates only to information received in writing or other material form; and

if such information is disclosed orally, the obligation shall apply for 30 days unless the discloser confirms such information in writing or other material form within 30 days when

the obligation of confidence shall apply thereafter.

5.2. The obligations under Clause 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:

- a. was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence; or
- b. has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it; or
- c. has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties; or
- d. was generated by that Party independently of the information which is subject to Clause 5.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Clause 5.1 is not revealed.

5.3. The obligations under Clause 5.1 shall be perpetual.

5.4. The AUTHORITY shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the Licence.

5.5. The AUTHORITY shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

## **6. IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT**

6.1. The LICENSOR declares that he is entitled as either owner or licensee to provide the Licensed Software to the AUTHORITY on the terms and conditions of the Licence.

6.2. Subject to the limitations imposed in Clauses 6.3 and 6.4, the LICENSOR shall assume all liability and indemnify the AUTHORITY against all costs or liabilities arising under any valid claim or action brought by a third party against either Party, or against any of its contractors (which expression shall include any sub-contractor) engaged in tasks relevant to the provision of the Licensed Software or to the AUTHORITY's exercise of the Licence, in respect of any third party intellectual property right, including a patent, registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the AUTHORITY or its contractor, then:

- a. If the claim or action is brought against the LICENSOR he shall take full responsibility for dealing with settling or defending the claim or action;
- b. If any claim is made against the AUTHORITY or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in his judgement;
- c. If legal action is taken against the AUTHORITY or its contractor that Party shall be entitled to join the LICENSOR in the action.

6.3. Clause 6.2 shall not apply, and the AUTHORITY shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of:

- a. Use of the Licensed Software by the AUTHORITY, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the LICENSOR's specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the AUTHORITY as distinct from other customers for the equivalent Licensed Software;
- b. Use of modifications to the Licensed Software not provided or not approved in writing by the LICENSOR;
- c. infringement by the LICENSOR of any third party intellectual property right by reason only of use

of any material provided by the AUTHORITY for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.

6.4. Clause 6.2 shall not apply in the event that, without the consent of the LICENSOR (which shall not be unreasonably withheld) the AUTHORITY:

- a. has made or makes an admission of any sort to the third party relevant to the claim or action;
- b. the AUTHORITY has entered or enters into negotiations with the third party relevant to the claim or action;
- c. the AUTHORITY has made or makes an offer to the third party for settlement of the claim or action.

6.5. Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against it or its contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the AUTHORITY may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR's agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Clause 6.2. If any claim is made against the AUTHORITY under Section 55 of the Patents Act 1977 as a result of the AUTHORITY's use of the Software, and if the AUTHORITY offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the LICENSOR, the LICENSOR shall be relieved of any liability which might otherwise arise under Clause 6.2.

6.6. In the event that any claim or action is made which is subject to Clause 6.2 or if in the LICENSOR's reasonable opinion such claim or action is likely to be made, the LICENSOR shall promptly utilise all reasonable endeavours to:

- a. establish or secure the AUTHORITY's right to continue to Use the Licensed Software or, failing to do so,
- b. avoid that claim or action by, and after consultation with the AUTHORITY as to how to minimise the AUTHORITY's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR's expense, including installation and testing.

6.7. In the event of the LICENSOR being unable to satisfy the requirements of sub-Clauses 6.6a. or 6.6b. the LICENSOR may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and the LICENSOR shall make a refund of the licence fee to the AUTHORITY, either in full or with the agreement of the AUTHORITY (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.

6.8. The conditions set forth in clauses 6.2 to 6.7 represents the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a third party, and take precedence over any other liability condition in the Licence.

## **7. WARRANTY**

7.1. LICENSOR warrants that discrepancies between Licensed Software and the LICENSOR's specification or user documentation current at the time of delivery reported and demonstrated by the AUTHORITY during the warranty period stated in Part VII of the Schedule will be remedied by LICENSOR without unreasonable delay in a manner commensurate with good software industry practice and without payment by the AUTHORITY. During the warranty period the LICENSOR undertakes to provide to the AUTHORITY free of charge corrections to material errors known to the LICENSOR.

7.2. All warranties in the Licensed Software and its user documentation other than that given under Clause 7.1 are hereby excluded including, without limitation, the implied warranty and conditions of satisfactory quality and fitness for a particular purpose, but this shall not prejudice the right of the AUTHORITY to reject the Licensed Software in accordance with Clause 3.3.

7.3. No oral or written information or advice given by the LICENSOR, its agents or employees shall

create a warranty or extend the scope of the warranty given under Clause 7.1.

- 7.4. The LICENSOR shall utilise all reasonable endeavours to ensure that any Licensed Software supplied, irrespective of the mode of delivery, is free from any published computer virus. In the event that it can be shown that, at the time of delivery, the Licensed Software incorporated such a virus then the AUTHORITY may require the LICENSOR to remove the virus and within the limits of backup data provided by the AUTHORITY to restore any computer system incorporating the Designated Equipment to its pre-infected state or bear the cost of the necessary restoration work.

## **8. GENERAL LIABILITY CONDITIONS**

8.1. The LICENSOR shall have no liability to the AUTHORITY for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the AUTHORITY including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Licensed Software.

8.2. The exclusion provided under Clause 8.1 shall not apply where the AUTHORITY suffers loss because of a defect within the Licensed Software which defect is known to the LICENSOR at the time the Licensed Software is furnished to the AUTHORITY unless the AUTHORITY has previously been made aware of and accepted the presence of the defect and its relevance to the AUTHORITY's application of the Licensed Software.

8.3. The total of the LICENSOR's liability under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR's negligence, as provided by the Unfair Contracts Act 1977, and, except in relation to sub-Clause 13.2.2, no limitation shall apply in respect of any liability arising under the provisions of Clause 6.2.

## **9. TERM AND TERMINATION OF THE LICENCE**

- 9.1. Each Licence shall continue until the AUTHORITY terminates it by written notification to the LICENSOR, or it is terminated pursuant to Clauses 3.4 or 6.7.
- 9.2. The AUTHORITY shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the AUTHORITY may on prior written authorisation from the LICENSOR retain one copy for archival purposes only. The AUTHORITY shall promptly certify in writing once it has so done.
- 9.3. In the event of the LICENSOR drawing the attention of the AUTHORITY to a breach of any condition of a Licence then:
- where the breach is of a nature that cannot be remedied, the AUTHORITY undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur,
  - where the breach is capable of being remedied, the AUTHORITY shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The AUTHORITY shall indemnify the LICENSOR for all loss and damage incurred by him as a result of the breach.
- 9.4. The termination of any Licence shall be without prejudice to the continuation of the Head Agreement or any other Licence under it.

## **10. COMBINATION OF SOFTWARE**

- 10.1. The AUTHORITY may combine all or part of the Licensed Software with other materials to form a new work. Any portion of the Licensed Software included in a new work shall be Used only on Designated Equipment and shall be subject to the conditions of the Licence. The LICENSOR shall be absolved from any obligation or liability under the Licence to the extent that this arises as a result of the creation or use of any new work not approved in writing by the LICENSOR.

## **11. OUTPUT**

- 11.1. The AUTHORITY may freely copy and utilise any output resulting from Use in accordance with LICENSOR - supplied documentation of the Licensed Software.

## **12. DISPUTES**

- 12.1. Other than for any claim arising from non payment of a valid invoice should any question, dispute or difference whatsoever arise between the AUTHORITY and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).
- 12.2. Upon receipt of the ADR notice and subject to sub-Clause 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the AUTHORITY and the LICENSOR, however, the costs of arbitration shall be settled by the arbitrator.
- 12.3. Where a Party rejects the referral of the matter to ADR he shall promptly notify the other Party in writing of that rejection and the reasons for it.

## **13. TRANSFER**

- 13.1. The LICENSOR shall not assign his interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the AUTHORITY'S rights under the Licence and without notifying the AUTHORITY in writing of the identity of the assignee.
- 13.2. Unless prevented by law or national regulation the AUTHORITY shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:
  - 13.2.1. following a transfer from the AUTHORITY to the legal entity of any function of the AUTHORITY for which the Licensed Software has been obtained; or
  - 13.2.2. on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied "as is", and the liability referred to in Clause 8.3 shall be ten pounds sterling only.

PROVIDED THAT the Licensed Software novated in accordance with this sub-Clause may only be used for the same purposes for which the Authority was licensed in accordance with Clause 2 and wider use shall require the written approval of, and the grant of a further licence by, the LICENSOR.

## **14. DISCONTINUANCE OF BUSINESS**

- 14.1. The AUTHORITY shall have the right to secure from the LICENSOR, or from the authorised trustees or receivers acting on behalf of the LICENSOR, in the event of the LICENSOR permanently ceasing to maintain the Licensed Software or the LICENSOR permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the LICENSOR to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the LICENSOR, but no more than the LICENSOR uses himself, as the AUTHORITY shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.
- 14.2. If so required by a Special Condition, the LICENSOR shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the AUTHORITY is entitled under Clause 14.1 which copy shall be held by the LICENSOR as a bailee without lien for the AUTHORITY and be made

available to the AUTHORITY without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the AUTHORITY's demand and it shall be made available to the AUTHORITY at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.

- 14.3. The AUTHORITY shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The AUTHORITY shall hold in confidence all information in the documentation.

## **15. GENERAL**

- 15.1. If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:
- a. that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
  - b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.
- 15.2. 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.
- 15.3. No waiver of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 15.4. Neither the LICENSOR nor the AUTHORITY shall be liable for failure to perform any of its obligations under the Licence if that failure results from circumstances beyond its reasonable control.
- 15.5. Headings have been included for convenience only and shall not be used in construing any condition of the Licence.
- 15.6. The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.
- 15.7. The Licence shall constitute the entire agreement between the Parties relating to the Licensed Software and supersedes any previous agreement.
- 15.8. No right is granted to any person who is not a Party to the Licence to enforce any term of the Licence in his own right and the Parties declare that they have no intention to grant any such right.

## **DEFFORM 701 Schedule**

### **SAMPLE ATTACHMENT TO ANNEX TO HEAD AGREEMENT – STANDARD FORM OF LICENSING SCHEDULE**

#### **SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE AUTHORITY AND SURVEY SUPPLIES T/A KOREC DATED: 26<sup>th</sup> June 2020**

**CONTRACT REFERENCE NUMBER: 700577499**

By their respective signatures of this Schedule the Secretary of State For Defence (the "AUTHORITY") undertakes to purchase and SURVEY SUPPLIES T/A KOREC ( the "LICENSOR") undertakes to supply the Licensed Software for Use on the Designated Equipment at the Designated Site (all as identified below) under the Standard Conditions set down in the Annex to the Head Agreement and any Special Conditions set down in Part VIII below which may vary or add to those Standard Conditions.

#### **PART I - LICENSED SOFTWARE PROGRAMS**

*Trimble business centre Supplied by LICENSEE as the owner.*

#### **PART II - DESIGNATED EQUIPMENT**

*HM Laptop*

#### **PART III - DESIGNATED SITE**

*World Wide*

#### **PART IV – ACCEPTANCE PERIOD & TEST**

*N/A*

#### **PART V - LICENCE FEES**

*As defined at Schedule 2-Schedule of requirements for Services for contract 700577499 for the Provision of Trimble Business Centre licenses.*

#### **PART VI - INVOICE ARRANGEMENTS**

*Invoice and payments to be administrated in Contracting, Purchasing & Finance (CP&F) via EXOSTAR. In accordance with Pricing and Payment clause 14. Payment*

#### **PART VII - WARRANTY PERIOD**

*Duration of the contract.*

#### **PART VIII - SPECIAL CONDITIONS**

*Not Applicable.*

#### **PART IX – LIMITS OF LICENSOR'S LIABILITY**

In the event that no separate limit of liability is inserted in connection with the Licence the LICENSOR's liability under this PART IX shall not exceed five million pounds sterling.

FOR LICENSOR

FOR AUTHORITY

Signed... [REDACTED] ..... Signed..... [REDACTED]

Name... [REDACTED] Name ... [REDACTED]

[Print Name] [Print Name}

Appointment

REGIONAL SALES DIRECTOR Appointment...DES Ships Comrcl-NSS-FISS-2a

Date...08/09/2020..... Date.....09/09/2020

## **Payment Terms**

In accordance with General Condition 14. Payment.

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

Not Applicable

### **22 The processes that apply to this Contract are:**

Not Applicable

## **Schedule 1 - Additional Definitions of Contract**

**Schedule 1 - Additional Definitions of Contract**

Not Applicable

## Deliverables

### Deliverables Note

This matrix is intended to provide an overview of the parties' contractual obligations to assist with contract management. It does not form part of the contract and should not be relied upon to aid interpretation of the contract. In the event of any conflict, inconsistency or discrepancy between this matrix and the contract, the terms of the contract shall take precedence.

### Supplier Contractual Deliverables

#### Supplier Contractual Deliverables

Name	Description	Due	Responsible Party
Contract Data Sheet Condition 9.c	provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverable containing such.		Supplier Organization
Progress Meetings Condition 13	Attendance at progress meetings in accordance with the contract		Supplier Organization
Payment Condition 14.b	Submission of Invoices		Supplier Organization
Payment Condition 14.c	Payment		Supplier Organization
Import Licences Condition 8.d	Apply for and obtain all necessary licences		Supplier Organization

### Buyer Contractual Deliverables

#### Buyer Contractual Deliverables

Name	Description	Due	Responsible Party
Transparency Condition 5.b	Redact documents prior to publishing in line with contract.		Buyer Organization
Termination Condition 16, 17, 18	Written notice of Termination due to corrupt Gifts as stipulated in the contract		Buyer Organization
Notification of Claim Condition 7.b	Notify contractor of any third party claim and assist the contractor to dispose of said claim		Buyer Organization
Import Licences Condition 8.d	Assist application for licences that are defence/security related		Buyer Organization

# DEFFORM 111

## DEFFORM 111

### Appendix - Addresses and Other Information

#### 1. Commercial Officer

Name: [REDACTED]

Address: MOD Abbey Wood (South), #3229 | Ash 2b | Bristol | BS34 8JH

Email: [REDACTED] ☎ ☎ [REDACTED]

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

Name: [REDACTED]

Address MOD Abbey Wood (South), #3229 | Ash 2b | Bristol | BS34 8JH

Email: [REDACTED] ☎ ☎ [REDACTED]

#### 3. Packaging Design Authority Organisation & point of contact:

N/A

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

☎ ☎ N/A

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

Branch/Name: N/A

☎ ☎ N/A

(b) U.I.N. N/A

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

#### 6. Intentionally Blank

#### 7. Quality Assurance Representative: DES Ships MPS-QA-2

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.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

#### 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

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

**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](http://www.freightcollection.com)

**11. The Invoice Paying Authority**

Ministry of Defence, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

☎☎ 0151-242-2000 Fax: 0151-242-2809

**Website is:**

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site, Lower Arcott, Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** [Leidos-FormsPublications@teamleidos.mod.uk](mailto:Leidos-FormsPublications@teamleidos.mod.uk)

**\* NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.