



Ministry of Defence

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Ministry of Defence

C17CSAE DT

Loan Agreement to Contract No: 706048451

For:

Large Boat Aerial Delivery (LBAD) Ground Assessment

Between:	And
The Secretary of State for Defence	Contractor Name and Address:
Team Name and address:	Insert.
C17CSAE	
Walnut 2b #1027 DE&S	
Abbey Wood	
Bristol, BS34 8JH	
Email Address:	Email Address:
DESC17CSAE-Commercial12@mod.gov.uk	Insert
Telephone Number: +44 30 01672543	Telephone Number:
	Insert

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THIS AGREEMENT is dated

XX / XX / 2023

BETWEEN:

- (1) [INSERT TENDERER'S NAME] (company registration number [INSERT]) whose registered office is at [INSERT] (the "**Lessor**"); and
- (2) **THE SECRETARY OF STATE FOR DEFENCE** (acting as part of the Crown) (the "**Lessee**"),

hereinafter referred to either individually as "**Party**" or jointly as "**Parties**".

BACKGROUND:

(A) On 21 March 2023 the Authority advertised the Contract Notice, publication reference C17CSAE/ 706048451 inviting prospective Tenderers to submit proposals for the delivery of a Large Boat Aerial Delivery System ("**LBAD System**") to the Authority (the "**Invitation to Negotiate**").

(B) In addition to providing a written tender response in accordance with (iaw) Section E (Instructions on Submitting Your Tender) of the Invitation to Negotiate (ITN), Tenderers were required to provide an LBAD System to the Authority (Site) on a free-of-charge loan basis as part of their tender response. The loaned system will be used by the Authority to conduct a Ground Assessment (GA) of the provided LBAD System to establish to what extent it meets the Authority's System Requirements identified in Annex B – Tender Evaluation – of the Invitation to Negotiate Contract No: 706048451 (15th Sep 23)

(C) In furtherance of the requirements of the ITN referred to in Recital (B) above, the Parties have agreed to enter into this Loan Agreement (the "**Agreement**").

IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement.

Applicable Law: has the meaning given in Clause 13 (*Applicable Law and Jurisdiction*) and any other laws or regulations, regulatory policies, guidelines, or industry codes from time to time in force.

Business Day: a day, other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

Commencement Date: the date of this Agreement.

Delivery: the transfer of physical possession of the Equipment to the Lessee at RAF BRIZE Norton.

Delivery Date: **15/03/2024**, or such later date as may have been notified by the Lessee to the Lessor in its absolute discretion.

Equipment: the items of equipment listed in Schedule 1 (*Equipment: Items for Loan*) and all substitutions, replacements or renewals of such Equipment and all related accessories, manuals and instructions provided for it and all such items of equipment meeting the requirements for the LBAD System set out in Schedule 2 (Statement of Requirement).

Fit Form and Function (FFF): Loan Equipment should be identical in dimensions, weight, shape, and operation, as per original manufacturer specification but does not necessarily need to be in airworthy condition, with supporting paperwork.

Ground Assessment (GA): the activities undertaken by or on behalf of the Lessee on the proposed LBAD System to evaluate the level of compliance against the LBAD System Requirements to inform the Authority's evaluation of the Lessor's tender response to the Invitation to Negotiate iaw sections F20 to F25 of the Invitation to Negotiate.

Ground Assessment Start Date: means no earlier than 25 Mar 2024.

Government Furnished Assets (GFA): is a generic term for any MOD asset such as equipment, services, documents, and the provision of personnel.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade-marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim

priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Loan Period: the period of loan as set out in Clause 7 (*Duration*).

LBAD System: has the meaning given in Schedule 2 (Statement of Requirement).

Purpose: to support the Invitation to Negotiate assessment phase of the LBAD System in completing the GA.

Records: all documents relating to the safe and lawful operation and use of the Equipment.

Required Condition: each item of Equipment is iaw the original manufacturer specification and in such condition, functionality and working order that is necessary for the GA to be performed.

Risk Period: the period during which the Equipment is at the sole risk of the Lessee as set out in Clause 8.2 (*Title*).

Site: RAF Brize Norton, MOD Boscombe Down & Haslar NSRC Portsmouth or an alternative location as otherwise advised by the Authority. on a minimum 2 weeks' notice.

Top Level T&E Plan: the plan set out at Schedule 4 (*Top Level T&E Plan*).

Trials Plan: the plan to be developed by the Lessee following the production and Delivery of the LBAD System by the Lessor and which plan shall be developed from the Top Level, T&E Plan, and the Lessor's technical response to the Delivery Plan.

VVRM: Verification and Validation Requirements Matrix.

2 Purpose

- 2.1 The Lessor shall provide the Equipment to the Lessee on loan and on a free of charge basis for use by the Lessee at the Site subject to the terms and conditions of this Agreement.
- 2.2 The Lessee shall use the Equipment exclusively for the Purpose subject to the terms and conditions of this Agreement.

3 Delivery and Collection

- 3.1 Delivery shall be made by the Lessor to the Site. The Lessor shall deliver by the Delivery Date during the Lessee's usual business hours. Risk in the Equipment shall transfer to the Lessee iaw Clause 8.2 (*Title*) of this Agreement. The Lessor shall be responsible for all costs associated with Delivery and collection.
- 3.2 The Lessor shall ensure that the Loaned Equipment:
- 3.2.1 is properly packed, secured and protected from the elements for transportation to and arrival at Site;
- 3.2.2 is accompanied by a delivery note which shows any special unloading requirements and storage instructions (if any).
- 3.3 Delivery shall be complete on:
- 3.3.1 completion of unloading of the Equipment at Site by the Lessee;
- 3.3.2 identification of the Equipment to the Lessee;
- 3.3.3 Following visual inspection of the Equipment by the Lessee; and
- 3.3.4 The Lessee confirmation to the Lessor that the Equipment is complete and undamaged
- 3.4 The Lessor shall ensure that all surplus packaging material specifically used in transportation to Site is removed from Site immediately following Delivery.
- 3.5 Subject to compliance by the Lessor with paragraphs 2 and 3 of Appendix 3 to Annex C of the Invitation to Negotiate (DEFFORM 47, *Contractor Support to GA*), the Lessee shall provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and collection to be carried out safely and expeditiously.
- 3.6 The Lessor shall be responsible for ensuring the Equipment is collected at the end of the Loan Period pursuant to Clause 5.6 (*Lessee Obligations*) and shall be responsible for providing all packaging and completing packaging and preparation activities for transportation on collection.

4 Physical Acceptance and Rejection

- 4.1 Subject to Clause 4, acceptance and/or rejection of the Loaned Equipment or any part of it occurs at the time and iaw the procedures specified in Clause 5.1 (*Lessee Obligations*) of this Agreement.
- 4.2 The Lessee shall not be deemed to have accepted the Equipment unless it has had a reasonable opportunity to examine it fully, after Delivery pursuant to Clause 3.3 & 5.1 (*Lessee Obligations*) for the purpose of ascertaining whether it is in conformity with this Agreement.
- 4.3 Prior to acceptance by the Lessee, the Lessee may reject any Equipment (whether or not after inspection) which does not conform with the requirements of this Agreement.
- 4.4 The Lessee shall be deemed to have accepted the Equipment following the inspection process set out in Clauses 5.1.1 to 5.1.2 (*Lessee Obligations*) where the Lessee has not notified the Lessor of any defects, deficiencies or discrepancies discovered in the Equipment or any part of it pursuant to Clause 5.1.3.
- 4.5 Acceptance of the Equipment or any part of it does not limit or in any way affect the Lessor's obligation to remedy any defects which are discovered in the Equipment after the date such Equipment was accepted.
- 4.6 The Lessor may object in writing to a notification of rejection given by the Lessee pursuant to Clause 5.1.3 within five (5) Business Days of notification. If the objection is not resolved within a reasonable time, it shall be treated as a dispute within the meaning of Clause 14 (*Dispute Resolution*). Unless otherwise agreed, the Lessor shall not collect any item of Equipment which is the subject of the rejection notice unless and until the objection or dispute has been resolved in favour of the Lessee.

5 Lessee Obligations

- 5.1 Subject to Clause 5.2 below, within ten (10) Business Days of Delivery of the Equipment, or such other longer period as may be agreed by the Parties, the Lessee shall:
- 5.1.1 conduct a reasonable visual inspection for any damage and/or completeness of parts;

- 5.1.2 conduct any additional inspection and testing as may be necessary and practicable to check that the Equipment is not defective, lacks parts or is deficient for the Purpose for which it has been provided; and
 - 5.1.3 notify the Lessor of any defects, deficiencies, lack of parts or discrepancies discovered in the Equipment or any part of it iaw Clause 12 (*Notices*), in which case the Equipment or the relevant part of it shall be deemed to have been rejected.
- 5.2 The Lessee shall ensure that the Equipment is stored and operated iaw Schedule 4 (*Lessor's Instructions for Storage and Operation of the Equipment*).
- 5.3 The Lessee shall bear the reasonable cost of the repair or rectification of any damage to the Equipment resulting from misuse, neglect, mishandling or unauthorised manipulation by any person permitted by the Lessee to use the Loaned Equipment.
- 5.4 The Lessee shall not, without the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed) part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it.
- 5.5 The Lessee shall conduct the GA as contemplated in the Trials Plan.
- 5.6 On completion of the GA, the Lessee shall notify the Lessor that the GA is complete and within ten (10) Business Days of such notification, the Lessor shall collect the Equipment from Site. Collection shall be during normal business hours of the Lessee.
 - 5.6.1 Solution of the Preferred bidder will be retained by Authority for further assessment, until contract award.
- 5.7 Following completion of the GA and on or before collection of the Equipment by the Lessor, the Lessee shall provide the Lessor with a photographic record of the Equipment condition.

6 Lessor Obligations

- 6.1 The Lessor shall provide a complete system of Equipment (including consumables) in support of the GA. The Equipment loaned (that make up a complete LBAD System) are as detailed in Schedule 1 (*Equipment: Items for Loan*) which shall meet the requirements set out in Schedule 2 (*Equipment Systems Requirement*).

- 6.2 The Lessor shall, at its own expense, ensure the Equipment is in the Required Condition at the time of Delivery to the Lessee at the start of the Loan Period.
- 6.3 The Lessor shall provide the Lessee with the information and support to maintain the Required Condition for the duration of the Loan Period.
- 6.4 The Lessor shall at its own cost after receipt of any notice under Clause 5.1.3 (*Lessee Obligations*) replace, re-issue or authorise repair of the Equipment agreed to be defective or deficient provided that such replacement or repair is completed prior to the GA Start Date.
- 6.5 Without prejudice to Clause 6.6, the Lessor shall at the Lessee's cost replace, re-issue or authorise repair of any Equipment that is damaged referred to in Clause 5.3 (*Lessee Obligations*) within a reasonable time after being notified by the Lessee of such damage.
- 6.6 The Lessor shall promptly provide all technical support that is deemed necessary by the Lessee to support the GA.
- 6.7 Appendix 2 to Annex C of the Invitation to Negotiate (DEFFORM 47) describes the support that the Lessor shall provide to the Lessee in respect of the GA. Without prejudice to any other terms of this Agreement, the Lessor shall comply with Appendix 3 to Annex C (*Contractor Support to GA*) of the Invitation to Negotiate (DEFFORM 47). For the purposes of Contractor support, the expressions the "Authority" and the "Contractor" mean the Lessee and the Lessor respectively.

7 Duration

- 7.1 The Loan Period shall start on the Delivery Date and shall continue (unless and until terminated iaw Clause 10 (*Termination*)), until the Equipment is collected by the Lessor pursuant to Clause 5.6.

8 Title

- 8.1 The Lessor warrants that it has good title to the Equipment. The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).

- 8.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on completion of Delivery iaw Clause 3.3 (*Delivery and Collection*). The Equipment shall remain at the sole risk of the Lessee whilst the Equipment is in the possession, custody or control of the Lessee until the time when the Lessor has collected the Equipment from the Lessee pursuant to Clause 5.6 (the “**Risk Period**”).
- 8.3 During the Risk Period, the Lessee shall be liable for the reasonable costs arising from any damage to or loss of the Equipment such costs to be assessed by reference to the price list for Equipment submitted by the Lessor in its response to the Invitation to Negotiate.

9 Limitation of Lessee's Liability

- 9.1 Subject to Clauses 9.3 and 9.4 and any limitation or exclusion of liability as may be specified elsewhere in this Agreement, the Lessee shall be responsible for loss of or damage to the Equipment that occurs during the Risk Period but only to the extent that damage to the Equipment occurs as a result of the Lessee's failure to conduct the GA iaw the Trials Plan.
- 9.2 Subject to Clauses 9.3 and 9.4, the Lessee's total liability to the Lessor shall not exceed the value of the Equipment.
- 9.3 The Lessee shall not be liable in respect of:
- 9.3.1 defects or deficiencies in the Equipment notified to the Lessee iaw Clause 5.1.3 or latent defects which the Lessor can show could not reasonably have been discovered by means of the activities described at Clauses 5.1.1 to 5.1.2 (inclusive) (*Lessee Obligations*);
 - 9.3.2 fair wear and tear in Equipment (including consumables) resulting from its use in carrying out the GA as identified in the Trials Plan;
 - 9.3.3 Equipment rendered unserviceable as a direct result of ordinary performance of the GA;
 - 9.3.4 any loss or damage or costs or other liability of any nature which arise out of or in consequence of the performance or non-performance by the Lessor of any of its obligations under this Agreement or the negligent act or omission or wilful misconduct of the Lessor.

9.4 Nothing in this Agreement limits any liability which cannot legally be limited including liability for:

9.4.1 death or personal injury caused by negligence;

9.4.2 fraud or fraudulent misrepresentation;

9.4.3 any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.

10 Termination

10.1 If either Party shall be wound up, enters into any liquidation, calls any meeting of its creditors or comes to require a receiver or receiver manager of all or any of its undertaking or assets appointed, then the non-defaulting Party may terminate this Agreement without notice.

10.2 The Lessee may terminate this Agreement by service of notice on the Lessor:

10.2.1 if the Lessor withdraws from the procurement which is the subject of the Invitation to Negotiate before the Delivery of the Equipment;

10.2.2 if the Lessor fails to Deliver the Equipment in the Required Condition by the GA Start Date, and such termination shall be effective on the date the notice is served by the Lessee pursuant to Clause 12 (*Notices*).

10.3 Any termination of this Agreement pursuant to this Clause 10 (*Termination*) shall be without prejudice to the rights or liabilities of either Party, which may have occurred up to the date of the said termination.

11 Lessor's Intellectual Property Rights Indemnity

11.1 The Lessor shall indemnify the Lessee in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Lessee arising out of, or in connection with any claim made against the Lessee for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the hire or use of the Equipment.

12 Notices

- 12.1 Any notice required or authorised to be given under this Agreement shall be served by being sent by email to the Party for whom it is intended at the address for such Party as given below:

	Lessor	Lessee
Address:	Insert	C17CSAE Walnut 2b #1027 DE&S Abbey Wood Bristol BS34 8JH
F.A.O	Insert	Jason Atkinson
Email:	Insert	DESC17CSAE-Commercial12@mod.gov.uk
Tel:	Insert	+4430 01672543

- 12.2 Any notice so served shall be deemed to have been given if given by email at the moment of despatch and in providing such service it shall be sufficient only to prove that the email containing the notice was properly addressed.

13 Applicable Law and Jurisdiction

- 13.1 This Agreement shall be considered as a contract made in England and subject to English Law.
- 13.2 Subject to Clause 14 (*Dispute Resolution*) and without prejudice to the dispute resolution process set out in Clause 14, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Agreement or any breach of it.

- 13.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause 13 (*Applicable Law and Jurisdiction*) and for the enforcement of any judgement, order or award given under English jurisdiction.

14 Dispute Resolution

- 14.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement 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 (“**ADR**”) procedure on which the Parties may agree.
- 14.2 In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 14.3 The Party initiating the arbitration shall give a written Notice of Arbitration to the other Party. The Notice of Arbitration shall specifically state:
- 14.3.1 that the dispute is referred to arbitration; and
- 14.3.2 the particulars of the Agreement out of or in relation to which the dispute arises.
- 14.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 14 (*Dispute Resolution*) shall be governed by the provisions of the Arbitration Act 1996.
- 14.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 14.6 For the avoidance of doubt, it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

15 Entire Agreement

- 15.1 This Agreement is the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments, drafts of agreements, understandings, memoranda or other communications with respect to the subject matter of this Agreement and no agreement varying or extending the same will be binding on either one.

16 Counterparts

- 16.1 This Agreement may be entered into in any number of counterparts and each of the signed counterparts, when duly signed, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.

This Agreement is signed by the Parties on the day and year first above written.

For and on behalf of [Insert name of Lessor]	For and on behalf of The Secretary of State for Defence
Name	Name
Role	Role
Signed	Signed

Schedule 1

Equipment: Items for Loan

The items being loaned (that make up a complete LBAD System) are:

Item	Description	Part Number / Document Reference (as applicable)	Quantity
<i>Insert further rows as required...</i>			

Documents that support the loan are:

Item	Description	Document Reference	Quantity
<i>Insert further rows as required...</i>			

Schedule 2

Equipment System Requirements

Equipment iaw. Schedule 3, LBAD System Requirements Document (SRD)

Schedule 3

Top Level T&E Plan

iaaw Schedule 4, LBAD Top Level T and E Plan v 0.1

Schedule 4**Lessor's Instructions for Storage and Operation of the Equipment**

[Lessor to provide in advance of its Tender response]

Insert