

## OFFICIAL COMMERCIAL



Ministry  
of Defence

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Our Reference: 700344314

Date: 7th October 2020

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Dear Sir/Madam,

Invitation To: Tender Reference Number: 700344314- Truck Cargo Heavy Duty (TCHD) Post Design Services (PDS)

1. You are invited to tender for ITT 700344314: TCHD PDS in accordance with the attached documentation.
2. The anticipated date for the contract award decision is February 2021, with the contract start date being 1st April 2021. Please note that this is an indicative date and may change.
3. You must submit your Tender no later than 10:00 on 8th January 2021.
4. Tender submission will be via the AWARD® platform. Tenderers will receive AWARD® login details no later than 5 working days before the Tender submission date. Once logged into the AWARD® service, uploading and submission instructions will be readily available. Login details will be sent via two separate automatically generated emails. Tenderers should ensure their local mail application settings allow receipt of computer-generated emails.
5. Due to the ongoing outbreak of COVID-19, the Authority will monitor the situation and assess whether an extension to the Tender return deadline is appropriate. If you have any concerns regarding this, please contact the Authority. Any extension will be at the Authority's sole discretion.
6. Please confirm receipt of this tender to Mrs. Kayleigh Ainsworth at the following E-mail address: . Correspondence throughout the tender process should be sent primarily to but

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should also CC Jack Grady for completeness and timely action.

Yours faithfully,

Kayleigh Ainsworth

Commercial Officer

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**List of Suppliers Invited to Submit a Tender for ITT No. 700344314**

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| Supplier name                                 | Supplier Address and Phone No.  | Supplier Point of Contact |
|---|---|---------------------------|
| Marshall ADG<br>(Aerospace and Defence Group) | The Airport<br>Newmarket Road<br>Cambridge<br>CB5 8RY   |                           |
| Frazer Nash Consultancy Ltd.                  | The Cube<br>1 Lower Lamb Street<br>Bristol<br>BS1 5UD   |                           |
| Aspire Consulting                             | Unit 6 Lichfield Business Village, Staffordshire University, The Friary, Lichfield, Staffordshire, United Kingdom, WS13 6QG |                           |
| Jankel  | Belgrave House, 39-43 Monument Hill, Weybridge, Surrey, KT13 8RN  |                           |
| MW (Hull) Ltd.                                | Ellifoot Lane, Burstwick, Hull, East Yorks, HU12 9EF  |                           |

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**Terms and Conditions****DEFFORM 47****Contents**

This invitation consists of the following documentation:

- DEFFORM 47 - Invitation to Tender. The DEFFORM 47 sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:

- Section A - Introduction
  - Funding
  - DEFFORM 47 Definitions
  - Purpose
  - ITT Documentation and ITT Material
  - Tender Expenses
  - Material Change of Control from Supplier Selection
  - Contract Conditions
  - Consultation with Credit Reference Agencies
  - Other Information
- Section B - Key Tendering Activities
- Section C - Instructions on Preparing Tenders
  - Tenders for Selected Contractor Deliverables
  - Construction of Tenders
  - Validity
  - Variant Bids
- Section D - Tender Evaluation
- Section E - Instructions on Submitting Tenders
  - Submission of your Tender
  - Samples
- Section F - Conditions of Tendering
  - Conforming to the Law
  - Bid Rigging and Other Illegal Practices
  - Conflicts of Interest
  - Government Furnished Assets
  - Standstill Period
  - Publicity Announcement
  - Sensitive Information
  - Reportable Requirements
  - Specific Conditions of Tendering
- DEFFORM 47 Annex A – Tender Submission Document (Offer)
  - Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations

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- Schedule of Requirements - Annex 1
- Statement of Requirement - Annex 1
- Pricing Schedule - Annex 2
- Truck Cargo Heavy Duty (TCHD) PDS Renewal Data Item Description (DID) Index - Annex 3
- Contract Conditions
- DEFFORM 111 - Appendix to Contract - Addresses and Other Information
- Schedule 5 - Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)
- Draft Security Aspects Letter - Annex 4
- Task Approval Form - Annex 5
- Tender Return Checklist - Annex 6
- Memorandum of Security for MoD Contractors - Annex 7
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**Section A - Introduction****Funding**

A1. Funding has been approved on 18th February 2020.

**DEFFORM 47 Definitions**

A2. "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.

A3. "Tenderer" means the economic operator or group of operators in the form of a consortium, including sub-contractors, who have been invited to submit a response to this Invitation to Tender. Where "you" is used this means an action on you the Tenderer.

A4. "Invitation to Tender" (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response, competitive dialogue or negotiation.

A5. A "Tender" is the offer that you are making to the Authority.

A6. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificates(s) of Conformity supplied in accordance with any Quality Assurance (QA) requirements, if specified) and any associated technical data which the contractor is required to provide under the contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.

A7. "Schedule of Requirements" means that part of the contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.

A8. The "Statement of Requirement" details the technical requirements and acceptance criteria [Schedule 8 in SC2] of the Contractor Deliverables. The Statement of Requirement is attached at Annex 1 to this DEFFORM 47. This may include the System Requirements Document (SRD).

A9. "Conditions of Tendering" means the conditions set out in the DEFFORM 47 that govern the competition.

A10. "Contract Conditions" means the attached conditions that will govern any resultant contract.

A11. A "Third Party" is any person who is not an employee of the Authority or Tenderer, as defined at A3.

**Purpose**

A12. The purpose of this ITT is to invite you to propose a solution / best price to meet the Authority's requirement. This documentation explains and sets out the:

- a. tender process and timetable for the next stages of the procurement;
- b. instructions and conditions that govern this competition;
- c. information you must include in your Tender and the required format;
- d. administrative arrangements for the receipt and evaluation of Tenders; and
- e. Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.

A13. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

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A14. This ITT has been issued to all potential Tenderers that expressed an interest in receiving the ITT.

A15. This ITT is totally exempt from Advertising and is exempt from the Defence and Security Public Contracts Regulations 2011 under Regulation 7(1)(a) in conjunction with Article 346 (1)(a) TFEU.

**ITT Documentation and ITT Material**

A16. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Material means any other material (including patterns and samples), equipment or software issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Documentation, ITT Material and any Intellectual Property Rights (IPR) in them shall remain the property of the Authority or other Third Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
- b. not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
- d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A16.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
- e. accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;
- f. inform the named Commercial Officer if you decide not to submit a Tender;
- g. immediately return all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
- h. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.

A17. Some or all of the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A16 above.

**Tender Expenses**

A18. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

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**Material Change of Control from Supplier Selection**

A19. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any sub-contractors at any time during the procurement process. This may affect your right to stay in the competition.

**Contract Conditions**

A20. Standardised Contract 2 (SC2) conditions are attached.

**Consultation with Credit Reference Agencies**

A21. The Authority may consult with credit reference agencies to assess your creditworthiness. This information may be used to support and influence decisions to enter into a contract with you.

**Other Information**

A22. In view of this requirement, level of access and nationality restrictions involved, this procurement is exempt from Regulation 7(1)(a) of the DSPCR in conjunction with Article 346 (1)(a) TFEU.

A23. REDACTED

A.24 All personnel assigned to this Contract must have or be willing to obtain SC clearance as a minimum prior to the contract start date. This must be retained throughout the Contract term.

A24. An appropriately detailed Security Aspects Letter will be issued to the winning tenderer, in accordance with JSP 440, Part 2, Leaflet 13 (Contract and Project Security) and DEFCON 659A & DEFCON 660. The Security Aspects Letter is required to be signed by the winning Tenderer only. See attached draft Security Aspects Letter at Annex 4

**Section B - Key Tendering Activities**

The key dates for this procurement are currently anticipated to be as follows:

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| <b>Stage</b>   | <b>Date and Time</b>       | <b>Initiated By</b> | <b>Submit to:</b>                     |
|--|----------------------------|---------------------|---------------------------------------|
| Invitation to Bidders Conference   | N/A                        | The Authority       | N/A                                   |
| Date for Confirmation of attendance at Bidders Conference                    | N/A                        | Tenderers           | N/A                                   |
| Final date for Clarification Questions / Requests for additional information | 13th November 2020 - 12:00 | Tenderers           | K Ainsworth/ J Grady                  |
| The Authority issues Final Clarification Answers                             | 20th November 2020 - 17:00 | The Authority       | All Tenderers                         |
| Final Date for Requests for Extension to return date                         | 4th December 202 - 12:00   | Tenderers           | K Ainsworth/J Grady                   |
| Tender Return  | 8th January 2021 - 10:00   | Tenderers           | AWARD® - login details to be provided |
| Tender Evaluation  | W/C 11th January 2021      | The Authority       | N/A                                   |
| Negotiations   | N/A                        | The Authority       | N/A                                   |
| Reverse Auction  | N/A                        | The Authority       | N/A                                   |
| Trials / Testing   | N/A                        | The Authority       | N/A                                   |

**Notes**

1. A Bidders Conference is where the Authority presents the requirement to all Tenderers at the same time. A copy of the presentation will be issued to all Tenderers regardless of attendance. It gives you an opportunity to ask questions about the requirement. The Tenderer must provide the name(s) of those attending the Bidders Conference to the above-named contact, by the date shown, so that access to the site can be arranged.

2. The Tenderer must make requests for an extension in writing (email is sufficient) to the above-named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.

3. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed, you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other Tenderers. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date. The Authority will endeavour to ensure that you have at least 10 working days to submit your Tender.

4. Negotiations are not permitted under the Open or Restricted Procedures.

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**Section C - Instructions on Preparing Tenders****Tenders for Selected Contractor Deliverables**

C1. You must Tender for all the Contractor Deliverables listed in the attached Schedule of Requirements. The Authority reserves the right to reject all or part of your Tender where you have not tendered for all of the Contractor Deliverables.

**Construction of Tenders**

C2. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP ex VAT. Prices must be Firm Price and detail any price breakdowns which must be included in the Tender (see Annex 2)

C3. To assist the Authority's evaluation please set out your Tender response in accordance with Section D (Tender Evaluation).

**Validity**

C4. In accordance with F3 your Tender must be valid / open for acceptance for 90 calendar days from the Tender return date. If successful, your Tender must be open for acceptance for a further thirty (30) calendar days.

**Variant Bids**

C5. Variant Bids. Any Tender made subject to additional or alternative Contract Conditions alone is not a variant bid. A variant bid is a Tender that offers an alternative approach to, or method of, meeting the Authority's requirements as set out in the ITT Documentation. Where the tender evaluation has a pass / fail for the Contract Conditions the Authority may reject the Tender on the grounds of such additional or alternative Contract Conditions.

C6. The Authority cannot evaluate any Variant Bids during this competition.

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**Section D - Tender Evaluation**

D1. The Contract will be awarded on the basis of the Most Economically Advantageous Tender (MEAT). That is to say, when considering all the factors, the proposal that enables the Authority to achieve best value for money.

D2. The evaluation procedure is divided into the following key stages, which the Authority may nevertheless decide to run concurrently;

- A) Commercial Compliance/validation – The Authority will check the Tender to ensure it is commercially compliant with the ITT in accordance with D5, and that the responses are valid. Non-compliant Tenders may be excluded from this Procurement by the Authority.
- B) Technical Evaluation – An Evaluation Panel provided by the Authority will assess the Tender responses in accordance with 'D6 Technical Evaluation Criteria' and 'D6 Table 1: Technical Evaluation Criterion Scores', applying the Consensus Marking Procedure described within this document.
- C) Price Evaluation – The Authority will evaluate responses according to 'D7 Pricing Evaluation'

D3. Final Score

- The Technical Score will be added to the Price Score to determine the “Final Score” for each Potential Provider (see D8)

D4. Questions and Clarifications

Tenderers may raise questions or seek clarification regarding any aspect of this Procurement at any time prior to the Tender Clarifications Deadline (see the Procurement Timetable as set out in Section B). Questions must be submitted via e-mail to: K Ainsworth/ J Grady

To ensure that all Tenderers have equal access to information regarding this Procurement, the Authority will publish all its responses to questions asked and or clarifications raised by Tenderers via email to all Tenderers.

If Tenderers ask any questions and or raise clarifications Tenderers are asked not to refer to their identity in the body of the question or clarification.

The Authority reserves the right to contact Tenderers at any time for clarification on all or any part of their Tender during this Procurement and which is likely to require a prompt response.

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**D5. Commercial Evaluation**

The commercial element of the evaluation is a simple 'PASS/FAIL' test with regard to the tender meeting the minimum commercial requirements as stated below. Where a Tender is Commercially non-compliant the Authority reserves the right not to evaluate the Technical Capability.

Tender responses will be marked as PASS/FAIL on the following Commercial criteria:

- a. Acceptance of, and compliance with, all MOD terms and conditions; (PASS/FAIL)
- b. Ability to deliver within required timescale(s) (PASS/FAIL)

Tender responses are to highlight compliance with the above two areas.

Tender responses must include all documents listed with Annex 6 - Tender Return Checklist.

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**D6. Technical Evaluation Criteria (75%)**

Each of the technical criteria referenced below will be marked using the scoring scale at Table 1 above:

| Criteria Number | Question  | Mark (0-5) | Weighting* (1-2) | Highest Possible Score | Total (mark x weighting) |
|-----------------|---|------------|------------------|------------------------|--------------------------|
| 1               | To what extent does the Tenderer's proposal satisfy the criteria in the Statement of Requirement – 'monitor legislation changes'? <i>{provide evidence of how the requirements specified in serial 3.1 of the Statement of Requirement will be met}</i>                           |            | 1                | 5                      |                          |
| 2               | To what extent does the Tenderer's proposal satisfy the criteria in the Statement of Requirement – 'Provide Technical Support Services' <i>{provide evidence of how the requirements specified in serial 3.2 of the Statement of Requirement will be met}</i>                     |            | 2                | 10                     |                          |
| 3               | To what extent does the Tenderer's proposal meet the requirement of 'Publication upkeep' as detailed in the Statement of Requirement? <i>{provide evidence of how the requirements specified in serial 3.4 of the Statement of Requirement and DID 12 will be met}</i>            |            | 2                | 10                     |                          |
| 4               | To what extent does the Tenderer's proposal meet the requirement of 'configuration management' as detailed in the Statement of Requirement? <i>{provide evidence of how the requirements specified in serial 3.5 of the Statement of Requirement will be met}</i>                 |            | 2                | 10                     |                          |
| 5               | To what extent does the Tenderer's proposal meet the requirement of 'obsolescence monitoring' as detailed in the Statement of Requirement? <i>{provide evidence of how the requirements specified in serial 3.7 of the Statement of Requirement and DID 06 will be met}</i>       |            | 1                | 5                      |                          |
| 6               | To what extent does the Tenderer's proposal give confirmation for 'the provision of Post Design Service Support'? <i>{provide evidence of how the requirements specified in serial 3.8 of the Statement of Requirement will be met}</i>   |            | 2                | 10                     |                          |
| 7               | To what extent does the Tenderer's proposal give confirmation for the 'Supply Support'? <i>{provide evidence of how the requirements specified in serial 3.9 of the Statement of Requirement and DID 02 will be met}</i>  |            | 2                | 10                     |                          |
| 8               | To what extent does the Tenderer's proposal meet the requirements of 'safety management' as detailed in the Statement of Requirement? <i>{provide evidence of how the requirements specified in serial 3.11 of the Statement of Requirement and DIDs 07 &amp; 08 will be met}</i> |            | 2                | 10                     |                          |
| 9               | To what extent is the Tenderer's familiar with Allied Quality Assurance Publications  |            | 1                | 5                      |                          |

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|  |   |  |  |  |  |
|--|---|--|--|--|--|
|  | (AQAPs) 2210, 2131 and 2310? <i>{provide evidence of this}</i><br>Is the Tenderer able to provide a draft Quality Plan in accordance with AQAP 2105<br><i>{provide evidence of a draft Quality Plan, and/or evidence of how this would be met}</i><br>To what extent does the Tenderer have a strategy/process for Avoidance of<br>Counterfeit Materiel? <i>{provide evidence of this}</i><br>Is the Tenderer certified to ISO 9011:2015? <i>{provide certification evidence}</i> |  |  |  |  |
| <b>Total Technical Mark (out of a maximum of 75)</b> |   |  |  |  |  |

Any mark below **45** will result in the tender being considered technically non-compliant and will therefore be rejected.

Provided all mandatory criteria are met, a total score of 75 is allocated to the tender receiving the highest technical mark (NB: any mark below 45 will result in the tender being considered technically non-compliant), and a score is calculated for the remaining tenders using the below percentage (%) difference method, to the nearest percentage (to two decimal places). This will be considered as the 'Technical Score':

Total Available Score (75) x Technical Mark



Highest Technical Score

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| <b>D6. Table 1: Technical Evaluation Criterion Scores*:</b>                          |                      |   |
|--|----------------------|---|
| Each individual criterion will be evaluated against the following scoring mechanism. |                      |   |
| 0  | Not Answered         | The response does not meet any of the requirements or no response has been provided. An unacceptable and/or non-compliant response with serious reservations, demonstrating no understanding of the requirement.  |
| 1  | Poor                 | The response addresses some of the elements of the requirement but does not fully detail or explain how the requirement will be fulfilled, which poses risk that the proposal will not meet the deliverables required. The response does not demonstrate a full understanding of the requirement posing major concerns.   |
| 2  | Partially Acceptable | The response addresses half of the elements of the requirement but contains insufficient / limited detail or explanation as to how the requirement will be fulfilled, which poses risk that the proposal will not meet the deliverables required. The response demonstrates some understanding of the requirement.  |
| 3  | Acceptable           | The response addresses the majority of the elements of the requirement but does not fully detail or explain how the requirement will be fulfilled. The response contains some detail to minimise risk and/or the proposed approach may require additional support (in addition to that outlined in the Statement of Requirements) from the Contracting Authority to meet its deliverables.            |
| 4  | Good                 | The response is sufficiently detailed and demonstrates a good understanding and provides details of how the requirements will be fulfilled. The response is sufficiently detailed to minimise risk and/or the proposed approach may require minimal support (in addition to that outlined in the Statement of Requirements) from the Contracting Authority to meet its deliverables.                  |
| 5  | Excellent            | The response is comprehensive, unambiguous and demonstrates a thorough understanding of requirement and provides details of how the requirement will be met in full, minimising risks to delivery. The response provides details of how the requirement will be met in full without additional support from the Contracting Authority, other than that outlined within the Statement of Requirements. |

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**D7. Pricing Evaluation (25%)**

Provided all mandatory criteria are met, a mark of 25 is allocated to the lowest price (as entered on DEFFORM 47 Annex A to this ITT), and a score is calculated for the remaining tenders using the below percentage (%) difference method, to the nearest percentage (to two decimal places). This will be considered as the 'Pricing Score'. Any scores of over 100 percent (%) difference between themselves and the lowest compliant bidder will receive a score of 0:

$$\frac{\text{Total Available Marks (25) x Lowest Compliant Price Quoted}}{\text{Price Quoted}}$$


---

Price Quoted

**D8. Overall Evaluation Score**

The overall evaluation score will be scored a mark out of 100 (as this represents 100% of the total score that is available) and the split is 75/25 technical/pricing respectively.

The Overall Evaluation Score will be a combination of the technical and pricing evaluation scores, as detailed below, to two decimal places:

$$\text{Technical Score} + \text{Pricing Score} = \text{Overall Evaluation Score}$$
**D9. Decision to Award**

Following evaluation of Tenders in accordance with the evaluation process set out in this ITT, the Potential Provider which offers the most economically advantageous Tender may be awarded a Contract.

Where the Final Score achieved by multiple Potential Providers ranks them equally, then the Potential Provider with the highest score for the price element will be deemed the winner and awarded the Contract.

Should the Potential Provider ranked first decline to accept a Contract, then it will be offered to the next ranked Potential Provider until it has been accepted.

A Contract award is subject to a 10-calendar day standstill period and formal signature by both parties (including the satisfaction of any conditions precedent) providing all pre conditions are met e.g. certificates, statements and other means of proof' where Potential Providers have to this point relied on self-certification.

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**Section E - Instructions on Submitting Tenders****Submission of your Tender**

E1. Tenders must be submitted electronically via the AWARD® Virtual Tender Board by 8th January 2021 10:00. The Authority reserve the right to reject any Tender received after the stated date and time. Hard copy, paper or delivered digital Tenders (e.g. DVD) are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender response to the ITT 700344314. You must provide one priced copy of your Tender and one unpriced copy. You should ensure that there are no prices present in your unpriced copy.

E2. You must ensure that your DEFFORM 47 Annex A is signed, scanned and uploaded to AWARD® with your Tender as a PDF. Your Tender must be compatible with MSWord and other MSOffice applications.

E3. Tenderers will receive AWARD® login details no later than 5 working days before the Tender submission date. Once logged into the AWARD® service, uploading and submission instructions will be readily available. Login details will be sent via two separate automatically generated emails. Tenderers should ensure their local mail application settings allow receipt of computer-generated emails.

E4. AWARD® is security accredited to OFFICIAL-SENSITIVE. Material that is protectively marked above this classification must not be uploaded.

E5. If you intend to upload any ITAR or Export Controlled information as part of your Tender, you must notify the Commercial Officer before you upload your Tender to AWARD®.

E6. If you have any difficulty accessing the AWARD® service or if you have any questions with regards to the tendering exercise itself, please contact K Ainsworth/ J Grady

**Samples - N/A**

E9. Samples are not required

**Section F - Conditions of Tendering**

F1. The issue of ITT Documentation or ITT Material is not a commitment by the Authority to place a contract as a result of this competition or at a later stage. Any expenditure, work or effort undertaken prior to any offer and subsequent acceptance of contract, is a matter solely for your commercial judgement. The Authority reserves the right to:

- a. seek clarification or additional documents in respect of a Tenderer's submission;
- b. visit your site;
- c. disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT;
- d. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic Pre-Qualification Questionnaire (PQQ) or the tender

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process;

- e. re-assess your suitability to remain in the competition, for example where there is a material change of control from supplier selection;
- f. withdraw this ITT at any time, or re-invite Tenders on the same or any alternative basis;
- g. re-issue this ITT on a single source basis, in the event that this procurement does not result in a 'competitive process' as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and / or the Single Source Contract Regulations 2014;
- h. choose not to award any contract as a result of the current procurement process;
- i. award a contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities; and / or:
- j. ask for an explanation of the costs or price proposed in the tender where the tender appears to be abnormally low.

F2. The contract will be entered into when the Authority sends written notification of its entry into the contract, via a DEFFORM 159. Written notification will be issued, to the address you provide, on or before the end of the validity period specified in paragraph C4 and subject to paragraph F3.

F3. It is a Condition of Tendering that the winning Tenderer holds their Tender open for acceptance for the period stated in C4. This period starts on the day the Authority announces its decision to award the contract to the winning Tenderer in accordance with the Tender. In the event that legal proceedings are instigated, challenging the award of the contract, prior to entry into contract, it is a condition of this ITT that you hold your Tender open for acceptance during this period, and up to fourteen (14) days after the result of the legal proceedings. In the event of such legal challenge, the Authority agrees to use all reasonable measures to accelerate proceedings.

### **Conforming to the Law**

- F4. You must comply with the UK Competition Act 1998, the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.
- F5. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

### **Bid Rigging and Other Illegal Practices**

- F6. You must report any bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tendering exercise to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

### **Conflicts of Interest**

- F7. You must notify the Authority immediately of any Conflicts of Interest (COI) that have arisen or that arise at any point prior to contract award decision. There may be

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instances where it is essential that you do not have a Conflict of Interest (COI).

- F8. Where there is an existing or potential Conflict of Interest (COI) you must include a proposed Compliance Regime in your Tender. As a minimum this must include:
- 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 (e.g. DEFFORM 702);
  - f. the Authority's rights of audit; and
  - g. physical and managerial separation.

Should your Tender be accepted your proposed Compliance Regime will become part of the Contract Conditions and shall be legally binding.

**Government Furnished Assets**

- F9. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If unsuccessful in this competition, you must seek instructions for the GFA from the named Commercial Officer.

**Standstill Period**

- F10. The Authority is obliged under certain circumstances to allow a space of ten (10) calendar days between the date of dispatch of its notice to Tenderers before entering into a contract, known as the standstill period. This period is to give unsuccessful Tenderers an opportunity to make a legal challenge before the contract is entered into if there has been, or it is alleged that there has been, a breach of the Regulations. The standstill period ends at midnight at the end of the 10th day after the date the DEFFORM 158 is sent. Where this is not a working day, it extends to midnight at the end of the next working day.

**Publicity Announcements**

- F11. The Authority will publish notification of the contract and shall publish contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition between suppliers. You should complete and return DEFFORM 539A as explained in the DEFFORM 47 Annex A and associated Appendix 1.
- F12. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.
- F13. Under no circumstances should you confirm to any Third Party the Authority's acceptance of an offer of contract prior to either informing the Authority of your acceptance or the Authority's announcement of the award of contract, whichever occurs first.

**Sensitive Information**

- F14. All Central Government Departments and their Executive Agencies and Non-

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Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom of Information requests.

- F15. For these purposes, the Authority may share within Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and / or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this procurement. Contractors taking part in this competition must identify any sensitive material in the DEFFORM 539A (SC2 Schedule 5) and consent to these terms as part of the competition process. This allows the MOD to share information with other Government Departments while complying with our obligations to maintain confidentiality.
- F16. The Authority reserves the right to disclose on a confidential basis any information it receives from Tenderers during the procurement process (including information identified by the Tenderer as Commercially Sensitive Information in accordance with the provisions of this ITT/ITN) to any third party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.

**Reportable Requirements**

- F17. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.
- F18. Failure to complete this part of the Annex in full makes your Tender non-compliant. Additional information provided in response to Appendix 1 may be used to support the Authority's evaluation of your tender, as detailed in Section D.
- F19. If you are an overseas Contractor and your Tender is successful you will be required to provide the name and address of your bank and the relevant bank account number on contract award.

**Specific Conditions of Tendering**

- F20. A Cyber Risk Assessment has been raised for this requirement under Assessment number RAR-5YYC2GW9. The associated Cyber Risk Profile is 'low'.

All potential suppliers who submit a Tender must also complete a Supplier Assurance Questionnaire against this Cyber Risk Assessment. A Supplier Assurance Questionnaire can be completed online at <https://supplier-cyber-protection.service.gov.uk>.

Suppliers can register to view the Assessment and submit their Questionnaire at <https://supplier-cyber-protection.service.gov.uk/organisation/register>

Further guidance on the Cyber Risk process can be found at <https://www.gov.uk/government/collections/defence-cyber-protection-partnership> and in the Cyber Security Model Industry Buyer and Supplier Guide at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/669646/20171201\\_Cyber\\_Industry\\_Buyer\\_and\\_Supplier\\_Guide\\_FINAL\\_Dec\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/669646/20171201_Cyber_Industry_Buyer_and_Supplier_Guide_FINAL_Dec_2017.pdf)

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DEFFORM 47 Annex A - Edn 07/18

Ministry of Defence

Tender Ref No. 700344314

**TENDER SUBMISSION DOCUMENT (OFFER)**

To the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter called “the Authority”)

The undersigned Tenderer, having read the ITT Documentation, offers to supply the Contractor Deliverables at the stated price(s), in accordance with any referenced drawings and / or specifications, subject to the Conditions of Tendering. It is agreed that only the Contract Conditions or any amendments issued by the Authority shall apply.

|   |                             |                         |                 |              |
|---|-----------------------------|-------------------------|-----------------|--------------|
| <b>Applicable Law</b>   |                             |                         |                 |              |
| I agree that any contract resulting from this competition shall be subject to English Law   |                             |                         |                 | Yes / No*    |
| *Where 'No' is selected, Scots Law will apply.  |                             |                         |                 |              |
| <b>Total Value of Tender (excluding VAT)</b>  |                             |                         |                 |              |
| £<br>.....<br>.....   |                             |                         |                 |              |
| WORDS<br>.....<br>.....   |                             |                         |                 |              |
| <b>UK 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))<br>£.....  |                             |                         |                 |              |
| <b>Location of work (town / city) where contract will be performed by Prime:</b>  |                             |                         |                 |              |
| Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required) |                             |                         |                 |              |
| Tier 1 Sub-contractor Company Name  | Town / city to be Performed | Contractor Deliverables | Estimated Value | SME Yes / No |
|   |                             |                         |                 |              |
|   |                             |                         |                 |              |
|   |                             |                         |                 |              |
|   |                             |                         |                 |              |

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|   |                               |
|---|-------------------------------|
|   |                               |
| <b>Mandatory Declarations</b> (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):  | <b>Tenderer's Declaration</b> |
| Is the offer subject to the Authority contracting for all the Contractor Deliverables?  | Yes* / No                     |
| Is the offer made subject to a Minimum Order Quantity?  | Yes* / No                     |
| Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding?  | Yes* / No                     |
| Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, please complete and attach DEFFORM 528   | Yes* / No                     |
| Have you obtained foreign export approval necessary to secure IP user rights for the Authority in Contract Deliverables, including technical data, as determined in the Contract Conditions?  | Yes* / No                     |
| Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended? | Yes / No                      |
| Have you completed Form 1686 for sub-contracts?   | Yes / No                      |
| Have you completed the compliance matrix/ matrices?   | Yes / No / Not Required       |
| Are you a Small Medium Sized Enterprise (SME)?  | Yes / No                      |
| Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?   | Yes / No                      |
| Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)?  | Yes / No                      |
| If you have not previously submitted a Statement Relating to Good Standing, or circumstances have changed have you attached a revised version?  | Yes* / No / N/A               |
| Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?  | Yes* / No                     |
| Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement?  | Yes* / No                     |
| Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009 (as amended by <a href="#">EC 744/2010</a> ) of the European Parliament and of the Council.                 | Yes* / No                     |
| Have you attached The Bank / Parent Company Guarantee?  | Yes* / No / Not Required      |
| Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?   | Yes / No / Not Required       |
| Have you completed the additional Mandatory Requirements?   | Yes / No / Not Required       |
| *If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).  |                               |
| <b>Tenderer's Declaration of Compliance with Competition Law</b>  |                               |
| We certify that the offer made is intended to be genuinely competitive. No aspect of the price has  |                               |

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been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:

- a. the offered price has not been divulged to any Third Party,
- b. no arrangement has been made with any Third Party that they should refrain from tendering,
- c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion,
- d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and
- e. no arrangement has been made with any Third Party otherwise to limit genuine competition.

We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.

We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.

We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.

**Dated this..... day of ..... Year .....**

**Signature:** ..... **In the capacity of** .....

(Must be original signature) (State official position e.g. Director, Manager, Secretary etc.)

**Name:** (in BLOCK CAPITALS)

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

(Tenderer's Name)

**Postal Address:**

**Telephone No:**

**Registered Company Number:**

**Dunn And Bradstreet number:**

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**Appendix 1 to Annex A (Offer)****Information on Mandatory Declarations****Part Tender**

1. Under Condition of Tendering F1, the Authority reserves the right to order some or part of your Tender. If your offer is subject to the Authority contracting for all the Contractor Deliverables, select 'Yes' and provide further details in your Tender.

**Minimum Order Quantities**

2. Where your offer is subject to minimum order quantities select 'Yes' and provide further details in your Tender.

**IPR Restrictions**

3. Where the Contractor Deliverables are subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding you must select 'Yes' in Annex A (Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding).
4. If you have answered 'Yes' in Annex A (Offer) as directed by paragraph 3 above, you must provide details in your Tender of any Contractor Deliverable which will be, or is likely to be, subject to any IPR restrictions or any other restriction on the Authority's ability to use or disclose the Contractor Deliverable, including export restrictions. In particular, you must identify:
  - a. any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered Design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a Third Party;
  - b. any allegation made against you, whether by claim or otherwise, of an infringement of Intellectual Property Rights (whether a Patent, Registered Design, unregistered Design Right, Copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
  - c. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
  - d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b.
5. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. The Authority will not acknowledge any such restriction unless so notified under paragraph 4 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.
6. If you have previously provided information under paragraphs 4 and 5 you can provide details of the previous notification, updated as necessary to confirm their validity.

**Notification of Foreign Export Control Restrictions**

7. If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.
8. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant

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contract, you must provide the following information in your Tender:

- a. Whether all or part of any Contractor Deliverables are or will be subject to:
  - (1) a non-UK export licence, authorisation or exemption; or
  - (2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 8 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

9. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 8. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.
10. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.
11. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 8.
12. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

### Import Duty

13. European Union (EU) legislation permits the use of various procedures to suspend customs duties.
14. For the purpose of this competition, for any deliverables not yet imported into the EU, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and / or suspended.
15. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate Her Majesty's Revenue & Customs (HMRC) authorisations.

### Sub-contracts Form 1686

16. [Form 1686](#) (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the [Security Policy Framework - Contractual Process](#).

### Small and Medium Enterprises

17. 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.

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18. 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](#).
19. 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](#).
20. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 in the MOD Contracts Bulletin and further details can be obtained directly from:  
BiP Solutions Ltd  
Web address: [www.contracts.mod.uk](http://www.contracts.mod.uk)  
Tel No: 0845 270 7099

**Transparency, Freedom of Information and Environmental Information Regulations**

21. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the Prime Minister's letter of May 2010 ([Government Transparency and Accountability](#)) and the information contained within SC2 Conditions of Contract Clause A13.
22. Before publishing the contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").
23. You should complete the attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A or SC1B Schedule 4 or SC2 Schedule 5) explaining which parts of your Tender you consider to be commercially sensitive. This includes providing a named individual who can be contacted with regard to FOIA and EIR.
24. You should note that while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

**Electronic Purchasing**

25. Tenderers must note that use of the [Contracting, Purchasing and Finance \(CP&F\)](#) electronic procurement tool is a mandatory requirement for any resultant contract awarded following this Tender. By submitting this Tender you agree to electronic payment. Please feel free to consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant.

**Change of Circumstances**

26. If you have not previously submitted a Statement Relating to Good Standing or circumstances have changed, please select 'Yes' and submit a Statement Relating to Good Standing with your Tender.

**Asbestos, Hazardous Items and Depletion of the Ozone Layer**

27. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' and provide further details in your Tender.

**Military Aviation Authority (MAA) Requirements**

28. There are no MAA requirements.

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**Bank or Parent Company Guarantee**

29. A Parent Company or Bank Guarantee may be required. In the event that your tender is identified as the most favourable / compliant tender, but MOD assesses that a Parent Company or Bank Guarantee is required, then one will be requested (in the form of DEFFORM 24 / 24A as appropriate). No contract will awarded until a suitable Parent Company or Bank Guarantee, as appropriate, is in place.

**The Armed Forces Covenant**

30. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives as a result of their service.

31. The Covenant is based on two principles:

- a. the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
- b. special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

The Authority encourages all Tenderers, and their suppliers, to sign the Armed Forces Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.

32. [The Armed Forces Covenant](#) provides guidance on the various ways you can demonstrate your support through your Covenant pledges and how by engaging with the Covenant and Armed Forces such as employing Reservists, a company or organization can also see real benefits in their business.

33. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: [employerrelations@rfca.mod.uk](mailto:employerrelations@rfca.mod.uk)

Address: Defence Relationship Management

Ministry of Defence

Holderness House

51-61 Clifton Street

London, EC2A 4EY

34. Paragraphs 30 – 33 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender review, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support.

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**Standardised Contracting Terms****SC2****GENERAL CONDITIONS****1. General**

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
  - (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
  - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
  - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
  - (4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
  - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
  - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
  - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
  - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

**2. Duration of Contract**

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

**3. Entire Agreement**

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any

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prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation.

**4. Governing Law**

a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.

b. Subject to clause 4.d and 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.

d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause 4.a, 4.b and 4.c shall be amended to read:

“a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.

b. Subject to condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

Clause 40.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

f. Each Party agrees with each other Party that the provisions of this condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

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**5. Precedence**

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

- (1) Conditions 1 - 44 (and 45 - 47, if included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
- (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition 40 (Dispute Resolution).

**6. Amendments to Contract**

a. Except as provided in condition 31 all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.

b. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause 6.a above has been issued.

**7. Variations to Specification**

a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.

b. Any variations that cause a change to:

- (1) fit, form, function or characteristics of the Contractor Deliverables;
- (2) the cost;
- (3) Delivery Dates;
- (4) the period required for the production or completion; or
- (5) other work caused by the alteration,

shall be the subject to condition 6 (Amendments to Contract). Each amendment under condition 6 shall be classed as a formal change.

**8. Authority Representatives**

a. Any reference to the Authority in respect of:

- (1) the giving of consent;
- (2) the delivering of any Notices; or
- (3) the doing of any other thing that may reasonably be undertaken by an individual acting

on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this condition 8.

b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

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c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition 6 (Amendments to Contract).

**9. Severability**

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

**10. Waiver**

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

**11. Assignment of Contract**

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

**12. Third Party Rights**

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

**13. Transparency**

- a. Subject to clause 13.b but notwithstanding condition 14 (Disclosure of Information), 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 13.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 – Contractor's Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 13.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this condition 13 shall affect the Contractor's rights at law.

**14. Disclosure of Information**

- a. Subject to clauses 14.d, 14.e, 14.h and condition 13 each Party:
- (1) shall treat in confidence all Information it receives from the other;
  - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

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(3) shall not use any of that Information otherwise than for the purpose of the Contract; and  
 (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

(1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and

(2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses 14.a and 14.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses 14.a and 14.b shall not apply to any Information to the extent that either Party:

(1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

(2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or

(3) can show:

(a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

(b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;

(c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or

(d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.

f. The Authority may disclose the Information:

(1) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

(2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

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

g. Before sharing any Information in accordance with clause 14.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where

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the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

**15. Publicity and Communications with the Media**

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

**16. Change of Control of Contractor**

a. The Contractor shall notify the Representative of the Authority at the address given in clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section  
Strategic Supplier Management Team  
Spruce 3b # 1301  
MOD Abbey Wood,  
Bristol, BS34 8JH

The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

c. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.

d. If the Authority exercises its right to terminate in accordance with clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 16.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

e. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this condition.

**17. Environmental Requirements**

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

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**18. Contractor's Records**

a. The Contractor and its sub-contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.

b. The Contractor and its sub-contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

(1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and

(2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under clause 1 of this Condition, and subject to the provisions of SC2 conditions of contract clause 14, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

- (1) the end of the Contract term;
  - (2) termination of the Contract; or
  - (3) the final payment
- whichever occurs latest.

**19. Notices**

a. A Notice served under the Contract shall be:

- (1) in writing in the English Language;
- (2) authenticated by signature or such other method as may be agreed between the Parties;
- (3) sent for the attention of the other Party's Representative, and to the address set out in Schedule 3 (Contract Data Sheet);
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
  - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
  - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

**20. Progress Monitoring, Meetings and Reports**

a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.

b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:

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- (1) performance/Delivery of the Contractor Deliverables;
- (2) risks and opportunities;
- (3) any other information specified in Schedule 3 (Contract Data Sheet); and
- (4) any other information reasonably requested by the Authority.

**SUPPLY OF CONTRACTOR DELIVERABLES****21. Supply of Contractor Deliverables and Quality Assurance**

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

b. The Contractor shall:

- (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
- (2) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

c. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

d. The Contractor shall:

- (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
- (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
- (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

**22. Marking of Contractor Deliverables**

a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), 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 specified in Schedule 2 (Schedule of Requirements).

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 23 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

**23. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)**

a. Packaging responsibilities are as follows:

(1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.

(2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.

(3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all subcontractors.

(4) Where the Contractor or any of their subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:

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- (1) The Contractor shall provide Packaging which:
- (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
  - (b) is labelled to enable the contents to be identified without need to breach the package; and
  - (c) is compliant with statutory requirements and this Condition.

(2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

- (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
- (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 23.i to 23.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
- (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 23.i to 23.k.

c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

- (1) The Health and Safety At Work Act 1974 (as amended);
- (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
- (3) The REACH Regulations 2007 (as amended); and
- (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

- (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- (2) The Air Navigation Order.

e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables).

f. The Contractor shall comply with the requirements for the design of MLP which include clauses 23.f and 23.g as follows:

(1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.

(a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCP-SptEng-Pkg  
 MOD Abbey Wood  
 Bristol, BS34 8JH  
 Tel. +44(0)30679-35353  
 DESSEOCSCP-SptEng-PKg@mod.uk

(b) The MPAS Documentation is also available on the DStan website.

(2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).

(3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').

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(4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

(5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

(6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

(7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 23.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

(8) The documents supplied under clause 23.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor or their subcontractor is the PDA they shall:

(a) On receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 23.f.

(b) Where the Contractor or their subcontractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:

i. a list of all SPIS which have been prepared or revised against the Contract; and

ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 23.g(1)(b).

(2) Where the Contractor or their subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

(3) Where the Contractor or their subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, he shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 23.g(1)(b).

(4) Where the Contractor or their subcontractor is not a PDA but is registered, he shall follow clauses 23.g(1)(a) and 23.g(1)(b).

h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.

i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

(1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:

(a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

(b) Each consignment package shall be marked with details as follows:

i. name and address of consignor;

ii. name and address of consignee (as stated in the Contract or order);

iii. destination where it differs from the consignee's address, normally either:

(i). delivery destination / address; or

(ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;

iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.

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(i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 23.1.

(2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:

- (a) description of the Contractor Deliverable;
- (b) the full thirteen digit NATO Stock Number (NSN);
- (c) the PPQ;
- (d) maker's part / catalogue, serial and / or batch number, as appropriate;
- (e) the Contract and order number when applicable;
- (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
- (g) shelf life of item where applicable;
- (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
- (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
- (j) any additional markings specified in the Contract.

j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

- (1) the full 13-digit NSN;
- (2) denomination of quantity (D of Q);
- (3) actual quantity (quantity in package);
- (4) manufacturer's serial number and / or batch number, if one has been allocated; and
- (5) the CP&F-generated unique order identifier.

k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet).

l. The requirements for the consignment of aggregated packages are as follows:

(1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

(2) Two adjacent sides of the outer container shall be clearly marked to show the following:

- (a) class group number;
- (b) name and address of consignor;
- (c) name and address of consignee (as stated on the Contract or Order);
- (d) destination if it differs from the consignee's address, normally either:
  - i. delivery destination / address; or
  - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
- (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
- (f) the CP&F-generated shipping label; and
- (g) any statutory hazard markings and any handling markings.

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m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with condition 7 (Variations to Specification).

n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.

p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with condition 18 (Contractor's Records).

q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.

r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.

s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>

t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.

u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

#### **24. Supply of Hazardous Materials or Substances in Contractor Deliverables**

a. The Contractor shall provide to the Authority:

(1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and

(2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:

(1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 24.h below, and

(2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

c. If the Contractor is required, under, or in connection with the contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).

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e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:

- (1) activity;
- (2) the substance and form (including any isotope);

g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under Clause 24.a, any information arising from the provisions of Clauses 24.e, 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

- (1) Hard copies to be sent to:  
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
- (2) Emails to be sent to:  
DSA-DLSR-MovTpt-DGHSIS@mod.uk

i. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

## 25. Timber and Wood-Derived Products

a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

- (1) shall comply with the Contract Specification; and
- (2) must originate either:
  - (a) from a Legal and Sustainable source; or
  - (b) from a FLEGT-licensed or equivalent source.

b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

- (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- (3) safeguarding the basic labour rights and health and safety of forest workers.

c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.

d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the

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Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.

e. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.

f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with condition 18 (Contractor's Records).

g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

(1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and

(2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

h. The Authority may disclose the Information:

(1) The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

(2) verify the forest source of the timber or wood; and

(3) assess whether the source meets the relevant criteria of clause 25.b.

i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with condition 6 (Amendments to Contract).

j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Representative (Commercial).

k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with condition 6 (Amendments to Contract).

l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:

(1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at [www.forestry.gov.uk](http://www.forestry.gov.uk)) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or

(2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [www.fao.org](http://www.fao.org)).

## 26. Certificate of Conformity

a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.

b. The Contractor shall consider the CofC to be a record in accordance with condition 18 (Contractor's Records).

c. The Information provided on the CofC shall include:

(1) Contractor's name and address;

(2) Contractor unique CofC number;

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- (3) Contract number and where applicable Contract amendment number;
- (4) details of any approved concessions;
- (5) acquirer name and organisation;
- (6) Delivery address;
- (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
- (8) description of Contractor Deliverable, including part number, specification and configuration status;
- (9) identification marks, batch and serial numbers in accordance with the Specification;
- (10) quantities;
- (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 26.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with condition 18 (Contractor Records).

**27. Access to Contractor's Premises**

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

b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 1 are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such subcontractors.

**28. Delivery / Collection**

a. Schedule 3 (Contract Data Sheet) 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. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:

- (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
- (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) be responsible for all costs of Delivery; and
- (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:

- (1) contact the Authority's Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
- (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
- (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the

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responsibility of the Authority's Representative (Transport).

d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:

(1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or

(2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

**29. Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

(1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or

(2) the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.

**30. Rejection**

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.

b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified within thirty (30) Business Days.

**31. Diversion Orders**

a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

c. The Authority reserves the right to cancel the Diversion Order.

d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with condition 6 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

**32. Self-to-Self Delivery**

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

**LICENCES AND INTELLECTUAL PROPERTY****33. Import and Export Licences**

a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The

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Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

(1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

(a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and

(b) the end use as: For the Purposes of HM Government; and

(2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

c. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

(1) the Contractor shall, or procure that the Contractor's subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

(2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.

i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the

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Contract.

j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

- (1) a non-UK export licence, authorisation or exemption; or
- (2) any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in condition 34 (Third Party Intellectual Property – Rights and Restrictions).

l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

m. If the information to be provided under Clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 33.l.

n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 33.l or 33.m of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

p. Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are notified to the Contractor by that subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

q. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with condition 6 or 7 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

r. In the event that the restrictions notified to the Authority pursuant to Clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 33.l, termination under Clause 33.q will be in accordance with condition 43 (Material Breach) and the provisions of clause 33.v will not apply.

s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in

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respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.

t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

u. Where:

(1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 33.s or 33.t or both; or

(2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of condition 6 (Amendments to Contract) or condition 7 (Variations to Specification) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of condition 42 (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

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

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

(1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

(2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;

(3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause 34.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

b. If the Information required under clause 34.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned

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or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This condition shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

- (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
- (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.

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k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

(2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

(3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

(2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

(1) clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;

(2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;

(3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;

(4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) following a notification under clause 34.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

(6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

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**PRICING AND PAYMENT****35. Contract Price**

a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).

b. Subject to condition 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

**36. Payment and Recovery of Sums Due**

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36b 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 36a, 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 36a 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 36c 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.

**37. Value Added Tax**

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.

c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.

d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the

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Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.

f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with condition 40 (Dispute Resolution).

g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

**38. Debt Factoring**

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition 11 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition 38 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f
- (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both clauses 38.b and 38.c(2).

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c. The Contractor shall ensure that the Assignee:

- (1) is made aware of the Authority's continuing rights under clauses 38.a(1) and 38.a(2); and
- (2) notifies the Authority of the Assignee's contact Information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a(1) and 38.a(2).

d. The provisions of condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

**39. Subcontracting and Prompt Payment**

a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.

b. Where the Contractor enters into a Subcontract he shall cause a term to be included in such Subcontract:

- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
- (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
- (3) providing that where the Contractor fails to comply with clause 39.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid

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and undisputed for the purposes of clause 39.b(2) after a reasonable time has passed; and

(4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as clauses 39.b(1) to 39.b(4).

**TERMINATION****40. 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 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

**41. Termination for Insolvency or Corrupt Gifts****Insolvency:**

a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

(1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or

(2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or

(3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or

(4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or

(6) where the Contractor is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay his debts if:

(a) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or

(b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

(7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

(9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(10) the court making an administration order in relation to the company; or

(11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

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- (12) the company passing a resolution that the company shall be wound-up; or
- (13) the court making an order that the company shall be wound-up; or
- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in clauses 41.a(9) to 41.a(14) inclusive above.

b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

**Corrupt Gifts:**

c. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
  - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

(2) enter 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.

d. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits 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, the Authority shall be entitled:

- (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- (3) to recover from the Contractor any other loss sustained in consequence of any breach of this condition, where the Contract has not been terminated.

e. In exercising its rights or remedies under this condition, 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 performing, the prohibited act;
- (2) give all 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.

f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

**42. Termination for Convenience**

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) business days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

- (1) not start work on any element of the Contractor Deliverables not yet started;

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(2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;

(3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;

(4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b(2) and 42.b(3) of this condition.

c. Where this condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 42.b):

(1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:

(a) in the possession of the Contractor at the date of termination; and

(b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

(2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

(c) all such unused and undamaged materiel; and

(d) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

(3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

d. The Authority shall (subject to clause 42.e below and to the Contractor's compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

(1) the Contractor taking all reasonable steps to mitigate such loss; and

(2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:

(1) the name of the Contractor shall be substituted for the Authority except in clause 42.c(1);

(2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) business days; and

(3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this condition 42.

g. Claims for payment under this condition shall be submitted in accordance with the Authority's direction.

### 43. Material Breach

a. 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.

b. Where the Authority has terminated the Contract under clause 43.a 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, including but not limited to any costs and expenses incurred by the Authority in:

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- (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
- (2) obtaining the Contractor Deliverable in substitution from another supplier.

**44. Consequences of Termination**

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

**45 Project specific DEFCONs and DEFCON SC variants that apply to this contract**

The full text of Defence Conditions (DEFCONS) and Defence Forms (DEFFORMS) are available electronically via the [Acquisition System Guidance \(ASG\)](#)

**DEFCON 076 (SC2)**

DEFCON 076 (SC2) (Edn. 11/17) - Contractor's Personnel at Government Establishments

**DEFCON 082 (SC2)**

DEFCON 082 (SC2) (Edn. 11/17) - Special Procedure For Initial Spares

**DEFCON 625**

DEFCON 625 (Edn. 10/98) - Co-operation on Expiry of Contract

**DEFCON 637**

DEFCON 637 (Edn. 05/17) - Defect Investigation and Liability

**DEFCON 658 (SC2)**

DEFCON 658 (SC2) (Edn. 11/17) - Cyber

**DEFCON 659A**

DEFCON 659A (Edn. 02/17) - Security Measures

**DEFCON 660**

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

**DEFCON 694 (SC2)**

DEFCON 694 (SC2) (Edn. 08/18) - Accounting For Property of the Authority

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**DEFCON 647 (SC2)**

DEFCON 647 (SC2) (Edn. 11/17) - Financial Management Information

**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 (see F20 of this ITT)

**DEFCON 014 (11/05)**

DEFCON 014 (Edn. 11/05) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

**DEFCON 015 (02/98)**

DEFCON 015 (Edn. 02/98) - Design Rights and Rights to Use Design Information

**DEFCON 016**

DEFCON 016 (Edn. 10/04) - Repair and Maintenance Information

[The tenderer must complete a Contract Data Requirement (CDR) (DEFFORM 315 - see below) to identify the particular items of information / data to be delivered under the contract at Contract Award]

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DEFFORM 315-DC 15

## Ministry of Defence

## CONTRACT DATA REQUIREMENT

|   |  |   |   |
|---|--|---|---|
| <p>1. <u>ITT/Contract Number</u></p> <p>700344314</p>   | <p>2. <u>CDR Number</u></p>  | <p>3. <u>Data Category</u></p> <p>Design / Product Definition</p>   | <p>4. <u>Contract Delivery Date</u></p> |
| <p>5. <u>Equipment/Equipment Subsystem Description</u></p> <p>Contract Articles [<i>Specify the Top Platform Identifier</i>] – Only specify specific systems or items if these are the only items for which Technical Data will ever be needed.</p> |  | <p>6. <u>General Description of Data Deliverable</u></p> <p><b>1. Configuration Status Record</b> which shall include but not be limited to, all items as specified within DEF-STAN 05-57 excluding Software.</p> <p><b>2. Manufacturing Data Pack</b> in accordance with UK DID MDP (Edn 2/98).<br/><i>Technical Data to enable the Authority or its potential contractors to re-manufacture / re-assemble the Article(s) or any part thereof.</i></p> <p><b>3. Interface Information Pack</b><br/><i>Technical Data sufficient to enable the Authority or its potential contractors, to functionally connect the Articles or any part thereof with 3rd party article(s) and / or inter-operate with them.</i></p> <p>4. Other Data Pack - Define as necessary</p> |   |
| <p>7. <u>Purpose for which data is required</u></p> <p>Competitive tendering for Continuing or Post Design Services tasks which may include but not be limited to; Design, Modification, Integration and Upgrade of the Contract Article(s).</p>    | <p>8. <u>Intellectual Property Rights</u></p> <p>a. <u>Applicable DEFCONs</u><br/>DEFCON 15 Edn 02/98<br/>DEFCON 21 Edn 10/04</p> <p>b. <u>Special IP Conditions</u></p> |   |   |
| <p>9. <u>Update/Further Submission Requirements</u></p>   |  |   |   |
| <p>10. <u>Medium of Delivery</u></p> <p>Electronic</p>  | <p>11. <u>Number of Copies</u></p> <p>1</p>  |   |   |

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**DEFCON 021 (10/04)**

DEFCON 021 (Edn. 10/04) - Retention of Records

**DEFCON 090**

DEFCON 090 (Edn. 11/06) - Copyright

**DEFCON 611 (SC2)**

DEFCON 611 (SC2) (Edn. 02/16) - Issued Property

**DEFCON 532A (SC2)**

DEFCON 532A (Edn. 08/20) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

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## 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.

## Quality Assurance Conditions

In accordance with:

- SC2 Terms & Conditions: 21. Supply of Contractor Deliverables and Quality Assurance
- Schedule 3 Contract Data Sheet: Condition 21 'Quality Assurance'

## Processes

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

### Tasking process

- a. The tasking process for any ad-hoc requirements requested by the Authority will require the completion of a Task Approval Form. No work is to be completed until the Task Approval Form has been completed and signed by all the relevant parties.
- b. The Task Approval Form can be found at Annex 5 - Task Approval Form to this Contract.

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## **46 Special conditions that apply to this Contract**

### **DEFSTAN 05-061 Pt 1**

Quality Assurance Procedural Requirements - Concessions (Issue 6)

### **DEFSTAN 05-061 Pt 4**

Quality Assurance Procedural Requirements - Contractor Working Parties (Issue 3)

### **DEFSTAN 00-600**

Integrated Logistics Support requirements for MOD projects - Integrated Logistics Support (ILS) Requirements.

### **DEFSTAN 00-601**

Contracting for Technical Documentation.

### **DEFSTAN 05-10 Issue 6 - 26 Feb 13**

Product Definition Information

### **DEFSTAN 05-57 Issue 6 - 7 Mar 14**

Configuration Management of Defence Material

### **DEFSTAN 05-99 Issue 4 - 23 Dec 10**

Managing Government Furnished Equipment in Industry

### **DEFSTAN 05-134 Issue 1 - 10 Jul 14**

Avoidance of Counterfeit Materiel

### **DEFSTAN 59-411 Issue 2 - 31 Mar 14**

Electromagnetic Compatibility IEC 62402 Edition 1.0 1 Jun 07 Obsolescence Management - Application Guide

### **DSA.01**

Defence Policy for Health, Safety and Environmental Protection.

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**SC2 Schedules****Schedule 1 - Definitions of Contract****Articles**

means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. **(This definition only applies when DEFCONs are added to these Conditions);**

**Authority**

means the Secretary of State for Defence acting on behalf of the Crown;

**Authority's Representative(s)**

shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of condition 8;

**Business Day**

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

**Central Government Body**

a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- a. Government Department;
- b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c. Non-Ministerial Department; or Executive Agency;

**Collect**

means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;

**Commercial Packaging**

means commercial Packaging for military use as

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described in Def Stan 81-041 (Part 1)

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| <b>Conditions</b>                                    | means the terms and conditions set out in this document;   |
| <b>Consignee</b>                                     | means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;  |
| <b>Consignor</b>                                     | means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;  |
| <b>Contract</b>                                      | means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Amendments to Contract);   |
| <b>Contract Price</b>                                | means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.   |
| <b>Contractor</b>                                    | means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority; |
| <b>Contractor Commercially Sensitive Information</b> | means the Information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;   |
| <b>Contractor Deliverables</b>                       | means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to   |

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provide under the Contract;

**Control**

means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

- a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
- b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

**CPET**

means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;

**Crown Use**

in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

**Dangerous Goods**

means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);
- b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
- c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
- d. International Maritime Dangerous Goods (IMDG) Code;
- e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe

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Transport of Dangerous Goods by Air;  
f. International Air Transport Association  
(IATA) Dangerous Goods Regulations.

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| <b>DBS Finance</b>                       | means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);   |
| <b>DEFFORM</b>                           | means the MOD DEFFORM series which can be found at <a href="https://www.aof.mod.uk">https://www.aof.mod.uk</a> ;  |
| <b>DEF STAN</b>                          | means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;  |
| <b>Deliver</b>                           | means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;  |
| <b>Delivery Date</b>                     | means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;   |
| <b>Denomination of Quantity (D of Q)</b> | means the quantity or measure by which an item of material is managed;  |
| <b>Design Right(s)</b>                   | has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;   |
| <b>Diversion Order</b>                   | means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);  |
| <b>EffectiveDate of Contract</b>         | means the date specified on the Authority's acceptance letter;  |
| <b>Evidence</b>                          | means either: <ul style="list-style-type: none"> <li>a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or</li> <li>b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;</li> </ul> |

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| <b>Firm Price</b>                        | means a price (excluding VAT) which is not subject to variation;  |
| <b>FLEGT</b>                             | means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;   |
| <b>Government Furnished Assets (GFA)</b> | is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;  |
| <b>Hazardous Contractor Deliverable</b>  | 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;   |
| <b>Independent Verification</b>          | means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent"; |
| <b>Information</b>                       | means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;   |
| <b>Issued Property</b>                   | means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;   |
| <b>Legal and Sustainable</b>             | means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;   |

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| <b>Legislation</b>                              | 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; |
| <b>Military Level Packaging (MLP)</b>           | means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;   |
| <b>Military Packager Approval Scheme (MPAS)</b> | is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);   |
| <b>Military Packaging Level (MPL)</b>           | shall have the meaning described in Def Stan 81-041 (Part 1);  |
| <b>MPAS Registered Organisation</b>             | is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;  |
| <b>MPAS Certificated Designer</b>               | shall mean an experienced Packaging designer trained and certified to MPAS requirements;   |
| <b>NATO</b>                                     | means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;   |
| <b>Notices</b>                                  | shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;  |
| <b>Overseas</b>                                 | shall mean non UK or foreign;  |
| <b>Packaging</b>                                | Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;<br>Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the                      |

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|   | Contract;  |
| <b>Packaging Design Authority (PDA)</b> | shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;  |
| <b>Parties</b>                          | means the Contractor and the Authority, and Party shall be construed accordingly;  |
| <b>Primary Packaging Quantity(PPQ)</b>  | means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);  |
| <b>Recycled Timber</b>                  | means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure.<br>Recycled Timber covers: <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> it excludes sawmill co-products; |
| <b>Safety Data Sheet</b>                | has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);  |
| <b>Schedule of Requirements</b>         | means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;   |
| <b>Short-Rotation Coppice</b>           | means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;   |
| <b>Specification</b>                    | means the description of the Contractor  |

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Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);

**STANAG4329**

means the publication NATO Standard Bar Code Symbolologies which can be sourced at <https://www.dstan.mod.uk/faqs.html>;

**Subcontractor**

means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;

**Timber and Wood-Derived Products**

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

**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;

**Virgin Timber**

means Timber and Wood-Derived Products that do not include Recycled Timber.

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**Annex to Schedule 1**

**Additional Definitions of Contract iaw. Conditions 45 - 47 (Additional Conditions)**

**DSA - Defence Safety Authority**

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**Schedule 2 - Schedule of Requirements**

See Annex 1 - Statement of Requirement

**Schedule 3 - Contract Data Sheet**

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| <b>General Conditions</b>  |
| <b>Condition 2 – Duration of Contract:</b>   |
| The Contract expiry date shall be: three (3) years from the start date   |
| <b>Condition 4 – Governing Law:</b>  |
| Contract to be governed and construed in accordance with:  |
| English Law  |
| Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause 4.g (if applicable) are as follows: |
| <b>Condition 8 – Authority’s Representatives:</b>  |
| The Authority’s Representatives for the Contract are as follows:   |
| Commercial: Jack Grady (as per DEFFORM 111)  |
| Project Manager: Andrew Holton (as per DEFFORM 111)  |
| <b>Condition 19 – Notices:</b>   |
| Notices served under the Contract shall be sent to the following address:  |
| Authority: Ministry of Defence, NH1 Spruce 3B #1301, Abbey Wood, Bristol, BS34 8JH (as per DEFFORM 111)  |
| Contractor: TBC  |
| Notices can be sent by electronic mail - YES   |
| <b>Condition 20.a – Progress Meetings:</b>   |
| The Contractor shall be required to attend the following meetings: TBC at Contract Award   |
| <b>Condition 20.b – Progress Reports:</b>  |

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The Contractor is required to submit the following Reports: see Annex 1 - Statement of Requirement

Reports shall be Delivered to the following address: TBC at Contract Award

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| <p><b>Supply of Contractor Deliverables</b></p> <p><b>Condition 21 – Quality Assurance:</b></p> <p>Is a Deliverable Quality Plan required for this Contract? YES</p> <p>If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within 20 Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.</p> <p>Other Quality Assurance Requirements: as detailed in SC2 conditions 45 - 47</p> |
| <p><b>Condition 22 – Marking of Contractor Deliverables:</b></p> <p>Special Marking requirements: N/A</p>  |
| <p><b>Condition 24 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:</b></p> <p>A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>a) The Authority's Representative (Commercial)</p> <p>b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.uk</p> <p>to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date:</p>   |
| <p><b>Condition 25 – Timber and Wood-Derived Products:</b></p> <p>N/A</p>  |
| <p><b>Condition 26 – Certificate of Conformity:</b></p> <p>Is a Certificate of Conformity required for this Contract? NO</p> <p>Applicable to Line Items: N/A</p> <p>If required, does the Contractor Deliverables require traceability throughout the supply chain?</p>   |

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| Applicable to Line Items: N/A   |
| <b>Condition 28.b – Delivery by the Contractor:</b><br><br>See Annex 1 - Statement of Requirement   |
| <b>Condition 28.c - Collection by the Authority:</b><br><br>N/A   |
| <b>Condition 30 – Rejection:</b><br><br>The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:<br><br>The time limit for rejection shall be 30 Business Days. |
| <b>Condition 32 – Self-to-Self Delivery:</b><br><br>N/A   |

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| <b>Pricing and Payment</b>                    |
| <b>Condition 35 – Contract Price:</b>         |
| All Schedule 2 line items shall be FIRM Price |

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| <b>Termination</b>  |
| <b>Condition 42 – Termination for Convenience:</b>  |
| The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here: |
| The Notice period for termination shall be 20 Business Days   |

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| <b>Other Addresses and Other Information</b> <i>(forms and publications addresses and official use information)</i> |
| See Annex A to Schedule 3 (DEFFORM 111)   |

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**Schedule 4 - Contract Change Control Procedure (i.a.w. Clause 6b)****Contract No:****1. Authority Changes**

Subject always to Condition 6 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.

**2. Notice of Change**

a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clause 3 below.

**3. Contractor Change Proposal**

a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

b. The Contractor Change Proposal shall include:

1. the effect of the Change on the Contractor's obligations under the Contract;
2. a detailed breakdown of any costs which result from the Change;
3. the programme for implementing the Change;
4. any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
5. such other information as the Authority may reasonably require.

c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

**4. Contractor Change Proposal – Process and Implementation**

a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

1. evaluate the Contractor Change Proposal;
2. where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

1. indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Amendments to Contract); or
2. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.

c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b.(1) above.

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**5. Contractor Changes**

If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 3b above, and the process at Clause 4 above shall apply.

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**Schedule 5 - DEFFORM 539A Contractor's Commercially Sensitive Information Form  
(i.a.w. condition 13)**

**Contract No:** 700344314

|   |
|---|
| Contract No:  |
| Description of Contractor's Commercially Sensitive Information:   |
| Cross Reference(s) to location of sensitive information:  |
| Explanation of Sensitivity:   |
| Details of potential harm resulting from disclosure:  |
| Period of Confidence (if applicable):   |
| Contact Details for Transparency / Freedom of Information matters:<br><br>Name:<br><br>Position:<br><br>Address:<br><br>Telephone Number:<br><br>Email Address: |

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**Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract**

**Hazardous Contractor Deliverables, Materials or Substances  
Statement by the Contractor**

Contract No:

Contract Title:

Contractor:

Date of Contract:

\* To the best of our knowledge there are no hazardous Contractor Deliverables, materials or substances to be supplied.

\* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty: ) attached in accordance with condition 24.

Contractor's Signature:

Name:

Job Title:

Date:

\* check box (\*\*\*) as appropriate

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**To be completed by the Authority**

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)  
Department of Safety & Environment, Quality and Technology (D S & EQT)  
Spruce 2C, #1260  
MOD Abbey Wood (South)  
Bristol BS34 8JH

Emails to be sent to:

DESTECH-QSEPEnv-HSISMulti@mod.gov.uk

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**Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract**

NOT USED

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**Schedule 8 - Acceptance Procedure (i.a.w. condition 29)**

Acceptance shall be in accordance with condition 29

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**DEFFORM 111****Appendix - Addresses and Other Information****1. Commercial Officer**

Name: Jack Grady

Address: Ministry of Defence, NH1 Spruce 3B #1301, Abbey Wood, Bristol, BS34 8JH

Email: ☎☎

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

Name: Andrew Holton

Address: MOD, Abbey Wood, Bristol, BS34 8JH

Email: ☎☎

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

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

☎☎

**4. (a) Supply / Support Management Branch or Order Manager:****Branch/Name:** See paragraph 2 above

☎☎

**(b) U.I.N:****5. Drawings/Specifications are available from: N/A****6. Intentionally Blank****7. Quality Assurance Representative:** Nigel Williams

Email:

Address: MOD, Abbey Wood, Bristol, BS34 8JH

**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

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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 Arncott, 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.