

Contract Terms and Conditions

Contract No:

IRM16/1276

BABCOCK

In Service Support of Fire Fighting Vehicles

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| <p>Between Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</p> <p>Team Name and address:</p> <p>Mena Gosling-Hughes</p> <p>Babcock Building B15 MOD Donnington Telford, TF2 8JT</p> <p>E-mail Address: mena.gosling-hughes@babcockinternational.com</p> <p>Telephone Number: 01952 673822</p> | <p>And Contractor Name and address:</p> <p>E-mail Address:</p> |
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** Where the document refers to the Authority, this shall represent Babcock DSG who are acting as the Procurement Agent on behalf of the Authority*

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The Schedules that apply to this Contract are:

- Schedule 1.** Definitions of Contract
- Schedule 2.** Schedule of Requirement
- Schedule 3.** Contract Data Sheet
- Annex A to Schedule 3:** DEFFORM 111
- Schedule 4.** Contract Change Process
- Schedule 5.** Statement of work
- Schedule 6.** Contractors Commercially Sensitive Information
- Schedule 7.** Export Licence
- Schedule 8.** Acceptance Procedures
- Schedule 9.** Hazardous Articles, Materials or Substances Supplied under the Contract
- Schedule 10.** Deliverable Quality Plan Evaluation Form
- Schedule 11.** Sample Purchase Order
- Schedule 12.** Task Data Sheet
- Schedule 13.** Firm Pricing
- Schedule 14.** Contract Novation – Sample Novation Agreement
- Schedule 15.** Transfer of Undertakings (Protection of Employment) Regulations 2014 (TUPE) – Employee Transfer Arrangements on entry (Part 1) and exit (Part 2) and Appendix 1 & 2.

Contract Conditions for Contract No: IRM16/1276

A General Contract Provisions

A1. Interpretation

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

A2. Amendments to Contract

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

A3. Variations to Specification

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

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

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

A4. Precedence

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

A5. Severability

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

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

A6. Assignment of Contract

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

A7. Waiver

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

A8. Third Party Rights

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

A9. Governing Law

- a. Subject to **clause A9.d**, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to **clause A9.d and A21 (Dispute Resolution)** and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of

the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

- c. Subject to **clause A.9.d** any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

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

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

b. Subject to **clause A21** (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this **clause A9** and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

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

“In the event that the dispute or claim is not resolved pursuant to **clause A21.a** the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause **A21.b** shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

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

A10. Entire Agreement

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

A11. Disclosure of Information

- a. Subject to **clauses A11.d, A11.e, A11.h and A14** each Party:
- (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
- c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at **clauses A11.a and A11.b** before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. **Clauses A11.a and A11.b** shall not apply to any Information to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
 - (3) can show:
 - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
 - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;
- provided that the relationship to any other Information is not revealed.
- e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.
- f. The Authority may disclose the Information:
- (1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
 - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting

requirement;

- (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in **Schedule 1** (including benchmarking organisations) for any purpose relating to or connected with this Contract;
- (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

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

g. Before sharing any Information in accordance with **sub-clause A11.f** above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

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

A12. Publicity and Communications with the Media

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

A13. Protection of Personal Data

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

A14. Transparency

a. Subject to **clause A14.b** but notwithstanding **clause A11**, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with **clause A14.a**, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at **Schedule 7 (Contractor's Commercially Sensitive Information)**.

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with **clause A14.b**. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this **clause A14** shall affect the Contractor's rights at law.

A15. Equality

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

A16. Child Labour and Employment Law

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

A17. Subcontracting

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.
- b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.
- c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:
 - (1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and
 - (2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.
- d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience in the event that the Authority exercises its right to terminate this Contract under **clause A22 (Termination for Convenience)**, with twenty (20) Business Days' notice (or such other notice period as the Authority shall give under this Contract).
- e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone : 01204 880733) or <http://business.base-uk.org/procurement>.
- f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by **clause D1.a (Third Party Intellectual Property – Rights and Restrictions)**. On receipt of any such notification the Authority shall issue a written authorisation to the Subcontractor in accordance with **clause D1.g**. Any such authorisation shall always be subject to **clauses D1.j, D1.k and D1.n** as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in any such

claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.

g. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in the relevant parts of **Schedule 7 “Export Licence”**. Where it is not practicable to include the terms set out in **Schedule 7 “Export Licence”**, the Contractor shall report that fact and the circumstances to the Authority.

A18. Change of Control of Contractor

a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol BS34 8JH as soon as practicable of any intended, planned or actual change of Control. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority’s Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have.

b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.

c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority’s concerns to the Authority’s satisfaction in accordance with **clause A18.a**, or has failed to supply or withheld the Information required under **clause A18.a**.

d. If the Authority exercises its right to terminate in accordance with **clause F1.a.(4)** the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this **clause A18.d** must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority’s sole discretion.

A19. Termination for Insolvency or Corrupt Gifts

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

Insolvency:

a. where the Contractor is an individual:

(1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the “IA 86”) or the court making an interim order pursuant to Section 253 of the IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor’s creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor’s creditors) or a moratorium on any of the Contractor’s indebtedness comes into force;

(3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the “DAAS Act”) is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;

(4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

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

- (a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;
- (b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;
- (c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or
- (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(7) any analogous procedure or step is taken in any jurisdiction;

b. where the Contractor is a firm:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under Schedule A1 of IA 86 in respect of the Contractor;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) any event listed in **clause A19.a** occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor;

(4) any event listed in **clause A19.c** occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(5) an event listed in **clause A19.e** in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(6) any event listed in this **clause A19.b** occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;

(7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

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

- (a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
- (b) it is unable to pay its debts in terms of section 221 of IA 86; or

(11) any analogous procedure or step is taken in any jurisdiction;

c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging

documents in court in each case in respect of a moratorium on creditor action under Schedule A1 of IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;

(3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or

(7) any analogous procedure or step is taken in any jurisdiction;

d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

Corrupt Gifts

f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees):

(1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or

(b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;

(2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;

(3) has entered into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

g. In exercising its rights or remedies to terminate the Contract under **A19 f.** the Authority shall:

- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
- (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

h. Where the Contract has been terminated under **clause A19 f.** of this Condition, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

A20. Consequences of Termination

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

A21. Dispute Resolution

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

b. In the event that the dispute or claim is not resolved pursuant to **clause A21.a** the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this **clause A21.b** shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

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

A22. Termination for Convenience

a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in **Schedule 3 (Contract Data Sheet)** or if no such period is specified at the end of twenty (20) Business Days.

b. In the event that the Authority exercises its rights in accordance with **clause A22.a**, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.

c. The Authority's total liability under **clause A22.b** shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

A23. Contractor's Records

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

- (1) the end of the Contract term;
- (2) termination of the Contract; or

(3) the final payment,
whichever occurs latest.

A24. Duration of Contract

This Contract comes into effect on the 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.

A25. Contractor's Warranties

a. The Contractor warrants and represents, that:

(1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;

(2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;

(3) from the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

(4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

B The Contractor Deliverables

B1. Supply of Contractor Deliverables and Quality Assurance

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

b. The Contractor shall:

(1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables;

(2) comply with all applicable Legislation; and

(3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

c. The provisions of **clause B1.b.** shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

d. The Contractor shall:

(1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;

(2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and

(3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

B2. Environmental Requirements

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

B3. Disruption

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

C Price

C1. Contract Price

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

D Intellectual Property

D1. Third Party Intellectual Property – Rights and Restrictions

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

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

- a) If the Information required under **clause D1.a** has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.
- b) For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be

given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This clause shall not apply if:

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

d. The indemnity in **clause D1.c** does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

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

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

g. If, under **clause D.1a**, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (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 D1.a**.

k. Where authorisation is given by the Authority under **clause D1.e, D1.f or D1.g**, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

- (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
- (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

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

- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- (3) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

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

- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
- (2) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

- (1) **Clauses D1.a – D.1.m** represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
- (2) Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
- (3) A Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
- (4) The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
- (5) Following a notification under **clause D1.n.(3)**, the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

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

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

p. Nothing in **clause D1** shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

E Facilities and Assets

E1. Access to Contractor's Premises

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

F Delivery

F1. Authority's Remedies for Breach of Contract

a. If the Contractor:

(1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant date specified in Schedule of Requirements and / or the Specification;

(2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;

(3) supplies Contractor Deliverables that do not comply with **clause B1.b**;

(4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with **clause A18**, or fails to supply or withholds the Information required under **clause A18.a**;

(5) commits a persistent failure by failing to meet

(a) 1 or more KPIs on a rolling 3 month period,

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

(7) where the Contractor commits a persistent failure in accordance with **clause F1.a.(5)** or where the breach is material in accordance with **clause F1.a.(6)**, to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;

(8) refuse to accept the provision of any further Contractor Deliverables by the Contractor and the Contractor shall refund to the Authority any sums paid in respect of the Contractor Deliverables that fail to comply with the terms of the Contract;

(9) give the Contractor the opportunity at the Contractor's expense to carry out such remedial services as is necessary to correct the Contractor's failure or otherwise to rectify the breach within the Authority-specified time limits;

(10) purchase substitute services from elsewhere;

(11) claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

(a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or

(b) obtaining the Contractor Deliverables in substitution from another supplier.

b. In addition to the Authority's rights in **clause F1.a**, if the Authority reasonably believes at any time before the Contract Implementation Date that the Contractor will not be able to achieve Full Service Provision by the Contract Implementation Date then the Authority shall be entitled to terminate the Contract in whole or in part with immediate effect and without liability by giving written Notice to the Contractor.

- c. In the event that the Authority terminates the Contract in whole or in part pursuant to **clause F1.a.(7) or F1.b.** or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.
- d. This **clause F1** shall also apply to any remedial services carried out by the Contractor in accordance with **clause F1.a.(9)**.
- e. The Authority's rights and remedies under this **clause F1** are in addition to its rights and remedies implied by statute and common law.
- f. In the event that the Contractor does not adhere to the time of delivery notified by Babcock DSG, Babcock DSG shall not be held responsible for any subsequent claim by the Contractor, nor be held liable to meet any additional charges incurred by the Contractor through failure to deliver on the due date at the appointed time.

G Payment and Receipts

G1. Payment – *This payment clause (G1) does not apply – please see section L19 for further instructions/guidance.*

G2. Value Added Tax

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

G3. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with **clause A6 (Assignment of Contract)**, the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ('the Act')). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this **clause G3** shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under **clause G1.i**;
- (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both **clauses G3.b and G3.c.(2)**.

- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under **clause G3.a**, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under **clauses G3.a.1 and G3.a.2**; and
 - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with **sub-clauses G3.a.(1) and G3.a.(2)**.
- d. The provisions of **clause L19 (Payment)** shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

H1. Progress Monitoring, Meetings and Reports

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

H2. Authority Representatives

- a. Any reference to the Authority in respect of:
- (1) the giving of consent;
 - (2) the delivering of any Notices; or
 - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this **clause H2**.

- b. The Authority's Representatives detailed in **Schedule 3 (Contract Data Sheet)** (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update **Schedule 3 (Contract Data Sheet)** in accordance with **clause A2 (Amendments to Contract)**.

H3. Notices

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

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

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

DEFCON 76 (SC3) (Edn 12/14) Contractors Personnel at Government Establishments

DEFCON 91 (Edn 11/06) Intellectual Property Rights in Software

DEFCON 532 A (SC) (Edn 02/17) Protection of Personal Data

DEFCON 601 (SC) (Edn 03/15) Redundant Materiel

DEFCON 611 (SC3) (Edn 02/16) Issued Property

DEFCON 637 (SC) (Edn 05/17) Defect Investigations and Liability

DEFCON 694 (SC3) (Edn 03/16) Accounting for Property of the Authority

DEFCON 697 (SC3) (Edn 12/14) Contractors on Deployed Operations

K. Special Conditions of Contract that apply to this Contract are:

K1. 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 3 (Contract Data Sheet)** **Schedule 2 (Schedule of Requirements for Associated Goods)** 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 **clause A23 (Contractor's Records)**.
- c. The Information provided on the CofC shall include:
 - (1) Contractor's name and address;
 - (2) Contractor unique CofC number;
 - (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 for Associated Goods)**;
 - (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.

K2. Marking of Contractor Deliverables

a. The Contractor shall ensure that each Contractor Deliverable is marked clearly and indelibly:

(1) in accordance with the requirements specified in **Schedule 3 (Contract Data Sheet)**, or if no such requirement is specified, with the MOD stock reference number, NATO Stock Number (NSN) or alternative reference number specified in **Schedule 2, (Schedule of Requirements for Associated Goods)**;

(2) where the Contractor Deliverable has a limited shelf life, the marking shall include: the expiry date/date of manufacture, expressed as specified in **Schedule 3 (Contract Data Sheet)**, or in the absence of such requirement, they shall be marked as month (letters) and year (last two figures); and

(3) ensure that any marking method used does not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

b. Where it is not possible to mark a Deliverable with the required particulars, these should be included on the package in which the Deliverable is packed, in accordance with **clause K3, K4 and K9**.

K3. Supply of Hazardous Material or Substance in Contractor Deliverables

a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the regulations set out in this condition. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in Annex A to Schedule 2 (Schedule of Requirements for Associated Goods):

(1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;

(2) the International Maritime Dangerous Goods (IMDG) Code;

(3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and

(4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

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

c. As soon as possible and in any event within the period specified in Schedule 3 (Contract Data Sheet) (or if no such period is specified no later than one (1) month prior to the Delivery Date), the Contractor shall provide to the Authority's Representatives in the manner and format prescribed in Schedule 3 (Contract Data Sheet) and SC3 Core Plus Schedule "Hazardous Articles, Materials or Substances Supplied Under the Contract: Data Requirements":

(1) a completed SC3 Core Plus Schedule "Hazardous Articles, Materials or Substances Supplied Under the Contract: Data Requirements", confirming whether or not to the best of its knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and

(2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at clause d., which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

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

(1) Information required by the Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations 2009 and/or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable) or any replacement thereof;

(2) where the Hazardous Contractor Deliverable is, contains or embodies a Radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any isotope);

(3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed; and

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

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

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

K4. Timber and Wood-Derived Products

This Clause does not apply for this Contract.

K5. 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 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 20 (twenty) Business Days.

K6. 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, A Delivery Note (as specified in **Schedule 3 -Contract Data Sheet**).

(4) be responsible for all costs of Delivery; and

(5) Deliver the Contractor Deliverables (where applicable) to the Consignee as stated in of **Schedule 2, (Schedule of Requirements for Associated Goods)** 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 (DEFFORM 111)** 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 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

(4) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the 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 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 c**.

K7. Self to Self-Delivery

This Clause does not apply in this Contract.

K8. Acceptance

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure. *If no acceptance procedure is so specified acceptance shall occur when either:*

(1) The Authority does 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 K3.b** has elapsed.

K9. Packaging and Labelling (excluding Contractor Deliverables containing Munitions) This Clause does not apply in this instance.

Packaging requirements are to be determined on an individual task basis, and communicated via the Task Data Sheet.

K10. Overseas Expenditure

a. The Contractor shall report, in writing, to the Authority details of any direct Overseas expenditure valued over £1 million likely to be incurred in the execution of the Contract immediately the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:

(1) Contract No;

(2) country in which subcontract placed/to be placed;

(3) name, division and full postal address of Subcontractor;

(4) value of subcontract as applicable to main Contract;

(5) date placed / to be placed.

b. If no overseas orders valued over £1 million are to be placed, or are placed, the Contractor shall advise the Authority to this effect.

c. For the purpose of **clauses a. and b.** Overseas expenditure comprises only those direct payments made by the Contractor to:

(1) Overseas firms; and

(2) UK firms, including UK branches or subsidiaries of Overseas firms,

for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.

d. The Contractor shall submit any Information required by clause a. to the Authority's Representative (Commercial).

K11. Import Licence

If, in the performance of the Contract, the Contractor needs to import materiel into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

K12. Export Licence

a. The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Contractor Deliverable (including Information and software) to be delivered under the Contract is or will be subject to:

(1) a non-UK export licence, authorisation or exemption; or

(2) any other related transfer control,

that imposes or will impose end use, end user, re-transfer, 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 **clause D1**.

b. If requested by the Authority, the Contractor shall give the Authority a summary of every existing or expected licence and restriction referred to in **clause a.** and any related obligation or restriction to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, including, to the extent applicable to such obligations or restrictions:

(1) the exporting nation, including the export licence number (where known);

(2) the Contractor Deliverables (including Information and software) affected;

(3) the nature of the restriction and obligation;

(4) the authorised end use and end users;

(5) any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Contractor Deliverables or to anything Delivered or used in the performance or fulfilment of the Contractor Deliverables; and

(6) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Contractor Deliverables or of anything Delivered or used in the performance or fulfilment of the Contractor Deliverables.

The Contractor shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the Authority must comply.

c. When an export licence is required from a foreign government for the performance of the Contract, the Contractor shall promptly consult with the Authority on the licence requirements and, where the Contractor is the applicant for the licence:

(1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable to be Delivered under the Contract, the Contractor, unless otherwise agreed with the Authority, identifies in the licence 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;

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

d. If the Information required under **clauses a. and b.** has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of **clauses a. and b.**

e. If the Contractor becomes aware of any changes in the Information notified previously under **clauses a., b. or d.** 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, the Contractor shall notify the Authority promptly of the change.

f. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel for which an export licence 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. The Authority shall provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regard to any defence or security issue that may arise.

g. Where the Contract performance requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence 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 an Export Licence Plan for agreement with the Authority.

h. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request:

(1) the Contractor shall, or procure that the Contractor's Subcontractor will, 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 in accordance with the procedures of the licensing authority;

(2) the Authority shall provide sufficient Information, certification and other documentation necessary to support the application for the requested variation; and

(3) the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

i. Where the Authority provides materiel (Information and items, including software) to enable the Contractor to perform the Contract, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in the provisions of **clause a.:**

(1) the Authority may, or at the request of the Contractor, undertake to give the Contractor a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Contractor's ability to perform the Contract, including, to the extent applicable, to the Contractor's performance of the Contract:

(a) the exporting nation, including the export licence number (where known);

(b) the items or Information affected;

(c) the nature of the restriction and obligation;

(d) the authorised end use and end users;

(e) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and

(f) any specific restrictions on re-transfer or re-export to third parties of the items or Information affected.

(2) this will not include Intellectual Property specific restrictions of the type mentioned in **clause D1 (Third Party Intellectual Property – Rights and Restrictions)** in relation to the Authority instead of the Contractor;

(3) the Contractor and its Subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the Authority;

(4) the Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under **clause j**.

j. Where restrictions are advised by the Authority to the Contractor under **clause i**, the Authority and the Contractor shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a change to the Specification and handled under the terms of **clause A3 (Variations to Specification)** and the Contract Price or Delivery schedule or both shall be adjusted as appropriate. If the Contractor is unable to perform the Contract as a result of these restrictions then the Authority shall consult with the Contractor on alternative solutions requiring amendment of the Contract under **clause A2 (Amendments to Contract)** and **A3 (Variations to Specification)** and may terminate the Contract if no alternative solution satisfies the essential terms of the Contract. Termination under these circumstances will be under the terms of **clause A22 (Termination for Convenience)**.

k. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Contract.

K13. Key Performance Indicators and Performance Management

The Contractor's performance of the Contract shall be monitored and measured using the agreed Key Performance indicators (KPIs) within Section **L16** of this Contract.

K14. 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. Where necessary the Authority may issue (or having issued, cancel) a Diversion Order for urgent Delivery of the Contractor Deliverables identified in it:

- (1) where a Diversion Order is issued the Contractor Deliverables are to be Delivered by the quickest means available, unless otherwise directed;
- (2) a Diversion Order which is beyond the scope of the Contract is to be returned immediately to the Authority's Representative (Commercial) with an appropriate explanation;
- (3) if the terms of the Diversion Order are unclear, the Contractor shall contact the Authority's Representative who issued it immediately for clarification or further instruction, copying the Authority's Representative (Commercial) in on all correspondence;
- (4) the Contractor shall be entitled to any additional Delivery and Packaging costs generated in complying with the Diversion Order or cancellation thereof, claims for which are to be submitted by the Contractor to the Authority's Representative (Commercial) together with appropriate receipts and shall be priced and agreed in writing as a amendment to the Contract in accordance with **clause A2**. The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and Packaging cost.

K15. Copyright

- a. This Condition shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, except that it shall not apply to copyright works consisting of technical data and software where such rights are granted elsewhere in the Contract.
- b. The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.
- c. The Contractor agrees not to publish any copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national

interest. The Authority will review, upon request by the Contractor, any such restriction on publication.

- d. The Authority shall have, in respect of any copyright work to which this Condition applies, a free licence:
- (1) to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to **clauses b., c. or d.** of this condition, be made available to any third party;
 - (2) to issue the work or any part of the work or any copy of the work or any part thereof to any contractor or agent for the purpose of use only in connection with a contract for the United Kingdom Government for the study, management, evaluation, and/or assessment of the work, provided that any such contractor or agent shall be placed under an obligation which restricts disclosure and use of such work to the said purpose;
 - (3) to issue the work or any part of the work or any copy of the work or any part thereof to the government of a nation who is a member of the EU or NATO or bodies forming part of said groupings, to the Governments of Australia, New Zealand and Japan or such other government(s) of nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;
 - (4) to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes.

Provided that, subject to any pre-existing rights of the Authority, **clauses c. and d.** shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract. **Clauses c. and d.** shall apply to all works or part thereof unless otherwise marked by the Contractor in accordance with **clause f.** below.

- e. As soon as it becomes aware that any copyright work or part thereof Delivered or proposed to be Delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall inform the Authority and upon Delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.
- f. The Contractor may mark or include in any copyright work to which this Condition applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.
- g. This Condition shall constitute an "agreement to the contrary" for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.
- h. In this Condition "copyright work" shall be understood to include any works, data or other materials in which a database right subsists.

The Authority reserves to itself the right at its sole discretion to appoint an agent to manage this Contract, and to give directions to the Contractor, on its behalf. In the event of such an appointment, the Authority will notify the Contractor of the identity of the agent and of the scope of the agent's authority to so act.

K16. Limitation of Contractor's Liability

This Clause does not apply to this Contract.

L. The processes that apply to this Contract are:

L1. Scope of Contract

- a) The Contract is for the provision of comprehensive In - Service Support of the MOD Fire Fighting Vehicles Fleet. This shall be in accordance with the Statement of work, at **Schedule 5**, and as requested in accordance with Task Data Sheet raised by the Platform Project Manager.
- b) The Fire Fighting Vehicle (FFV) Fleet provides mandated tri-service fire and rescue services throughout the UK and overseas (including operations). The In-Service Support is expected to include the service, maintenance, and dry powder and foam certification for the Fire Fighting Vehicles to ensure the fleet remains capable.
- c) The Contract shall be an enabling Contract with a duration of 4 years (1 year, plus 3 x 1 option years). Tasks and costs will be issued and subsequently authorised by the Authority during the period.
- d) In the event of the Authority exercising the option years, firm prices for any extension period will be requested and a formal Contract Amendment shall be issued in confirmation.
- e) The Contractor shall carry out work authorised under Items 1, as notified by the Authority via Task Data Sheets (TDS) (detailed at **Schedule 12**). Each task will be serially numbered and issued only by the Platform Project Manager.
- f) The Contractor shall be responsible for supplying all replacement parts to enable any servicing or repair activity to be completed. All items supplied by the Contractor shall be original OEM parts and proof of authenticity of any spares may be requested by the Fire Platform Manager at any time during the Contract.

L2. Authority for Work

- a) No work is to be undertaken by the Contractor without the prior consent of the Platform Project Manager. In the event that personnel other than the Fire Platform Manager approach the Contractor directly, the Contractor must refer any such requests to the Platform Project Manager.
- b) This shall be done via a Task Data Sheet and must be done **BEFORE** commencing any work. This should be submitted as soon as practicable, once a task has been identified, but should be no later than **ONE** working day after such identification.
- c) When submitting a Task Data Sheet, the Contractor shall also provide a quotation for undertaking such work. This should include a comprehensive breakdown of all aspects of the task and the associated cost in accordance with the agreed rates detailed at Schedule 18, and the timescales for completion.
- d) It should be noted that there may be occasions when a requirement under the Contract requires the Contractor and/or its sub-contractors, to deploy to undertake tasks at expected work locations in an operational area. These will be communicated by authorised Task Data Sheet CONDO.
- e) Following receipt of the Contractor's Task Data Sheet the Authority will consider the recommendations and shall either;
 - Authorise the Contractor to proceed. This will be via the signing of the Task Data Sheet by the Authority's Technical and Procurement representatives; OR
 - Advise that the work is NOT to proceed.
- f) The Contractor shall respond to requests for repair within 2 working days of notification. Task shall be completed with the timescales agreed with the Platform Project Manager, and communicated via the Task Data Sheet.

All Task Data Sheets shall be submitted by email or post to:

Fire Platform Manager
I&RM Babcock
Building B15

Upon completion of the repair work, a report shall be generated and submitted to the Fire Platform Manager Technical Manager format which shall fully detail;

- The date maintenance has been completed
- The name and signature of the technician responsible for the work.
- A full description of the work conducted and any further work requirements (as highlighted by the technician whilst undertaking the maintenance activity).
- Any materials consumed in the completion of the agreed task.

L3. Quality/Specification

- a) All Contractor Deliverables shall be supplied and work undertaken in accordance with the Part No. Long Item description, the latest OEM/MoD Agreed Equipment Build Standard, as defined in the Schedule of Requirements, all applicable British Standards (or equivalent International Standards) and Technical data provided through the ISIS (Item of Supply Information System) database, as managed by the UK National Codification Bureau (UKNCB) and in conjunction with the Statement of Work (detailed at Schedule 6).
- b) All parts are to meet or exceed the OEM specification and are to be purchased from approved suppliers. Items are to be compatible with current in-service oils, fuels and lubricants. Certificates of conformity are to be obtained for all parts which have not been source through the OEM and are to be made available to the Authority within 10 working days when requested.
- c) It is intended that the Contractor will be required to supply all spares necessary to complete authorised repair work, these are to be obtained from the Contractor's own suppliers. If necessary, upon request from the Contractor, the Authority may be able to provide assistance in the form of Government Furnished Equipment (GFE) to assist with the repair. In this instance, the Authority shall reduce the agreed price by the cost of articles issued as GFE.
- d) The Contractor shall maintain their Quality Assurance Registration for the duration of the Contract.
- e) The Contractor shall immediately inform the Authority of any changes to their Quality Registration/ISO Accreditation, or the scope of activity of the same, that occur during the Contract duration. (See L9 – Key Performance Indicators).
- f) For the purposes of this Contract, the Quality Assurance Representative is:

Fire Platform Manager
Building B15
MoD Donnington
Telford
Shropshire
TF2 8JT
- g) The Contractor shall ensure that all Contract Deliverable are carried out, in accordance with the specifications of the Contract and, with the following quality requirements;
 - AQAP 2105 (Edition 2) – NATO Requirements for Deliverable Quality Plans
 - AQAP 2130 (Edition 3) NATO Quality Assurance Requirements for Inspection and Test.
 - DEF STAN 05-61 Part 1, Issue 6 dated 31 March 2016 (Concessions)
 - DEF STAN 05-61 Part 4, Issue 3 Amendment 1 dated 28 January 2011 (Contractor Working Parties)
 - DEF STAN 05-129 Issue 5 dated 30 June 2013 Contractors on Deployed Operations (CONDO) when requested.

- h) In the event that the Contractor identifies a discrepancy between one or more of the specifications/Standards detailed above in trying to repair a Contract Deliverable, the Contractor shall refer to the Quality Assurance Representative for further investigation. The repair of such Contract Deliverables should NOT proceed until the Quality Representative has provided clarification as to the correct specification to be applied.
- i) The Contractor shall advise the Authority, if they receive any major non-conformances as a result of a Third Party Audit.

L4. Duration

- a) The Contract shall have a 4 year duration from 2017 to 2021 **that shall comprise 1 x fixed year and 3 x 1 year Options** and shall cover all activity detailed on the Schedule of Requirements (**Schedule 2**), and any other authorised individual tasks, as required.
- b) The Contract shall be a Framework with a duration of 4 years (1 year, plus 3 x 1 option years). It will cover all activity as detailed on the Schedule of Requirements (Schedule 2) and any other authorised tasks, as required. Tasks and costs will be issued and subsequently authorised by the Authority during the period.
- c) In the event of the Authority exercising the option years, firm prices for any extension period will be requested and a formal Contract Amendment shall be issued in confirmation.
- d) After the Contract expires, only instructions relating to existing requirements and covering reduction, cancellation, changes of part numbers and similar alterations shall be issued. Orders covering new requirements or increases to existing requirements will not be issued or accepted after the expiration date.

L5. Responsibility of the Contractor

- a) The Contractor shall be entirely responsible for undertaking the work under the Contract as defined in the Contract Schedule of Requirements (**Schedule 2**).
- b) The Contractor shall be responsible for achieving proper completion of the Contract in accordance with its terms and shall be responsible for;
 - The efficient and proper functioning of all Contract Deliverables repaired under the Contract. All repair work must be undertaken by suitably qualified engineers.
 - Planning, programming and progressing of the work, within its control, to the satisfaction of the Authority. This includes sub-contracts and appropriate documentation.
 - Financial Management of the work, including financial control and monitoring of any sub-contracts;
 - Providing the Authority with the information, on a continuing basis, so as to reasonably assure that work is proceeding to time, cost and performance.
 - Guaranteeing the Contract Deliverables for a period of 12 months from the completion of repair work. In addition, the Contractor will pass on the individual warranty periods provided by parts suppliers for individual components replaced under Contract.
 - If a repaired contract deliverable is deployed into service, and fails, develops any defect or is otherwise found to be unsatisfactory, other than as a result of an act of omission of the Authority, within 12 months, the cost of rectification shall be borne by the Contractor. This shall also include (if necessary) surface transport to and from the MoD depot in the UK and the cost of any spare parts supplied from Authority sources.
 - Any rectification work shall be carried out in accordance with the quality standards specified in the Contract. In the event that the rectification work is carried out by persons other than the Contractor, the cost of that work shall be recoverable from the Contractor.
 - In the event that the Contractor incurs costs in ascertaining the cause of any faults, which as subsequently agreed to be not attributable to him, the Authority will pay fair and reasonable prices for the work done.

- c) If the Contractor fails to complete any part of the work, or supply any of the contract deliverable, as required by this Contract, or to meet any of the acceptance criteria (at **K8**), and such failure is not caused by undue delays by the Authority, it shall be the responsibility of the Contractor to rectify that failure to the reasonable satisfaction of the Authority at no additional cost.
- d) The Authority reserves the right to refuse payment for alterations or changes made outside of the scope of the Contract which have not been made in accordance with **A2 – Amendments**, or the provisions of **Schedule 4 – Contract Change Process** (as also detailed in **A2**).
- e) The Authority will not be bound to accept or pay for any Articles other than those authorised in accordance with the Contract. If the Contractor considers that any requirements made by the Authority are NOT in accordance with the terms of the Contract, they shall seek the agreement of the Authority's Representative as to the extent of the application of the requirements to that particular order. (See **H2** for definition of the Authority's Representative.)
- f) The Contractor shall provide an address, and email and telephone Point of Contact within the Tender Submission. Unless otherwise notified this shall become the Point of Contact for any resultant Contract.
- g) The Contractor shall be responsible for notifying the Authority of any change to the Point of Contact details.
- h) The Contractor is entirely responsible for the security of all MOD property in his possession for the purpose of the Contract. Such property must not be left unattended in any place accessible to the public. The Contractor shall ensure that all Contract Deliverables issued to them under this Contract are held at a secure location. The Contractor is responsible for ensuring that the security arrangements are met to the satisfaction of the Authority. In the event that the Contractor does not comply with the security requirements to the full satisfaction of the Authority, the Authority shall have the right to withhold any further work until such time that the Contractor is in compliance with the security requirements.

The Contractor should be aware of the security implications when performing MOD work and should take the necessary precautions to protect his staff and premises.
- i) The Contractor shall ensure that all reasonable steps are taken to observe the relevant economic, social and environmental legislation applying to the subject matter and/or the execution of the Contract by any employees or agents of the Contractor and any sub-contractors engaged in the performance of the Contract, the Contractor shall notify the Authority.
- j) If the Contractor becomes aware of any prosecutions or proceedings, for criminal breaches of the economic, social and environmental legislation applying to the subject matter and/or the execution of the Contract by any employees or agents of the Contractor and any sub-contractors engaged in the performance of the Contract, the Contractor shall notify the Authority at the details in box 1 of the DEFFORM 111.
- k) The Contractor is encouraged to bring to the attention of the Authority any measures which might promote sustainable procurement from a social, economic and environmental point of view. The Authority is committed to making resource use and assets sustainable. Sustainability is about ensuring that socio-economic and environmental threats, impacts and opportunities are fully considered to help reduce negative impact and risks to business and capability, and maximise the benefits.
- l) In the event that work is to be carried out on-site, the Contractor shall contact the relevant Military Unit, in advance to make the required arrangements to visit. If the Contractor fails to do so, then the Authority accepts no liability for any costs incurred on wasted or unnecessarily extended visits.

L6. Pricing

- a) The provision of In-Service Support of Fire Fighting Vehicles shall be on an ad-hoc basis, as requested in accordance with the relevant Task Data Sheet (Schedule 14), raised by the Authority. The Authority is under no obligation to request a minimum level of work under this Contract. The price for such service support shall be on the basis of the Firm Labour Rates detailed at Annex B to any resultant Contract added to any required spare parts at cost.

- b) The agreed rates for labour, travel and accommodation, detailed an Annex B to any resultant Contract will remain firm (i.e. Non Variable) for the duration of aforementioned Contract.
- c) In the event that the Authority and the Contractor agree revised rates for option periods, these will be formally agreed by issue of a Contract Amendment. The Contractor will be required to complete and return, to the issuer, the accompanying DEFFORM 10B to a formal amendment within 10 working days.
- d) In the event that the Contractor is required to travel within the UK Mainland to perform work under this Contract, travel and accommodation will be charged at the appropriate rates as detailed at Annex B to any resultant Contract (and proposed by the supplier at **Schedule 13**).

In the event that the Contractor is required to make overseas visit to perform work under this Contract travel and subsistence costs will be agreed at a fair and reasonable rate with the Fire Platform Manager PRIOR to travel occurring. The Contractor will be required to demonstrate all associated costs and produce receipts upon request by the Authority.

L7. Open Book Accounting

The Authority reserves the right to verify the prices paid by the Contractor for spare parts claimed under this Contract. To enable this, the Contractor shall make the facility available to check prices actually paid to third parties, for the purposes of this Contract, at all reasonable times and subject to prior notice and at no cost to the Authority,

L8. Notification of discontinuation of products

The Contractor shall inform the Authority, within 3 working days, of any possible difficulty in maintaining the future support of any of the Articles covered within the scope of the Contract. (as per **L9 – Key Performance Indicators**).

The Contractor shall inform the Authority, within 3 working days, if they intend to cease production completely of any Article covered by the Contract (as per **L9– Key Performance Indicators**)

L9. Key Performance Indicators and Performance Management

The Contractor's performance of the Contract shall be monitored and measured using the agreed Key Performance indicators (KPIs) (below)

| KPI Area | Target | Responsibility | Review Dates |
|---------------------------|---|----------------|---|
| Delivery Performance | 100% of Articles repaired and delivered within the timescales agreed in the Task Data Sheet (agreed on a case by case basis with the Fire Platform Manager) | Contractor | As required |
| | Report by exception reasons for delivery plan timescale failure and advise what actions have been put in place to prevent reoccurrence. | Contractor | As required |
| Warranty Repairs | 100% of repaired Articles shall not require rectification under warranty within 3 months of repair | Contractor | As required |
| Contract Amendments | The Contractor shall complete and return the DEFFORM 10B to the Procurement Branch within 10 Business Days. | Contractor | As required |
| Certificate of Conformity | Certificates of Conformity shall be made available to the Authority within 10 business days upon request. | Contractor | As required |
| Progress Reports | The Contractor is required to submit a progress report, to the Fire Platform Manager, detailed at Box 2 of DEFFORM 111). This shall be provided, by email, on a weekly basis and shall provide details of any work in progress and the schedule of activities planned for the following week. | Contractor | Weekly, via email to Fire Platform Manager as detailed at Box 2 of DEFFORM 111. |
| Progress meetings | The Contractor shall attend 100% of progress meetings, the frequency of which shall be reviewed and agreed between the parties, as appropriate. | Contractor | To be confirmed at contract award. |
| Minutes of Meetings | The Contractor will provide 100% minutes of meetings within 5 business days of the Local Equipment/Commercial Review Meetings to the authority | | |

L10. Deficiencies and Damage in Contract Deliverables issued for Repair/Remanufacture

The equipment issued for repair is to be checked on receipt for damage and correct nomenclature. If, in the course of repairing a contract deliverable, the Contractor identifies a discrepancy between one or more of the specifications/standards as (detailed at L3), there appears to be transit damage or deficiencies e.g. major components missing, or incorrect equipment, the Contractor shall refer immediately to the Quality Assurance Representative detailed at L3 for clarification on the correct specification to be applied.

L11. Disposal of Redundant Parts, Materials Etc

- a) All parts, materials etc. arising from the Contractor Deliverables issued to the Contractor for repair, whether serviceable or not, shall remain the property of the Authority, and any such parts, materials etc, not used in the repair of the Contractor Deliverables shall be disposed of as follows:
- Serviceable and economically repairable parts shall be dealt with in accordance with the instructions of the Authority.
 - All unserviceable parts, materials etc. certified by the Repair Manager as workshop salvage shall be disposed of by the Contractor on the Authority's behalf on fair and reasonable terms. Where required by the Repair Manager, such parts, materials etc. shall be dismantled and disposed of under his supervision so as to preclude the possibility of re-sale in their existing form.
 - Unless other arrangements have been agreed with the Authority, a list of the unserviceable parts, materials etc. disposed of under **sub-clause i.** above countersigned by the Repair Manager, shall be furnished to the Procurement Branch together with a statement of the proceeds.
- b) If there are no occurrences of unserviceable parts, materials etc, the Contractor shall, on the conclusion of the Contract furnish a certificate to that effect, countersigned by the Repair Manager, to the Procurement Branch.

L12. Warranty

- a) The Contractor shall provide a warranty, which should be no less than 12 (twelve) months on any Repair work and from the date of fitting to the vehicle and/or equipment.
- b) If, within 12 (twelve) months of the repair/remanufacture date, upon which a repaired/remanufactured Contractor Deliverable is deployed into service, it fails, develops any defect or is otherwise found to be unsatisfactory other than as a result of an act or omission of the Authority under this Contract, the cost of rectification, including all transport costs shall be borne by the Contractor.
- c) Under no circumstances shall the Contractor or any Sub-Contractor's proceed with repair/remanufacture or any other action which would invalidate the current warranty of the equipment. If any such equipment is received which the Contractor recognises as being under warranty, the Contractor should inform the Authority immediately.

L13. Turnaround Times

- a) Contractor Deliverables shall be repaired within the agreed turnaround time as detailed in the Task Data Sheet on a case by case basis in accordance with the firm pricing of Schedule 13.
- b) If the Contractor is unable to undertake the required task within the turnaround time, the Contractor must notify the Authority immediately with detailed reasons why the Contractor is unable to meet the turnaround time. The Authority shall have absolute discretion to extend the turnaround time.

- c) For the purposes of this Contract, 'business days' shall refer to Monday – Friday, excluding all Weekends, Bank Holidays and the seven (7) day period encompassing Christmas Day and New Year's Day (25th Dec and 1st Jan respectively).
- d) The Contractor shall monitor performance of each repair against the turnaround time and shall provide a Report in accordance with **Clause H1** and **Schedule 3** to the Contract. The report shall be sent to the Authority's Procurement Manager and Fire Platform Manager as identified at Box 1 and 2 of the DEFFORM 111.

L14. Payment and Invoicing Procedure

In order to facilitate payment, the Contractor shall send the following:

- Proof of delivery
- Copy of the BaaN invoice
- Copy of the Task Data Sheet
- Copy of the worksheet

To:

Fire Platform Manager
I&RM Babcock
Building B15
Telford
TF2 8JT

Email: Peter.dix@babcockinternational.com or Mike.jones@babcockinternational.com

L15. Surge

- a) The Contractor shall have a surge capability to cope with times of tension, Transition to War (TTW), other operational needs and war.
- b) The Authority will provide the Contractor with as much notice of surge requirements as possible. However, in particular circumstances, the notice period could be as little as 7 days. The Contractor shall maintain plans to meet future surge requirements.

L16. Contract Novation

- a) The Authority and Babcock DSG Limited (Company Number 09329025) (**Babcock**) entered into a Land Equipment Service Provision and Transformation Contract dated 31 March 2015 (the **SPC**) in respect of which certain services transfer, on a phased basis, from the Authority to Babcock.
- b) The Contractor acknowledges and agrees that the Authority (in its sole discretion) may transfer its rights and obligations under this Contract to Babcock as part of the transfer of services under the SPC.
- c) Following the receipt of a written notice by the Authority to the Contractor, the Contractor shall enter into the novation agreement set out at [ANNEX 1] (the **Novation Agreement**).
- d) Notwithstanding Clause 1.1 above, the Contractor further agrees at the request of the Authority to enter into any further agreement or document and take any formal steps which are necessary or desirable at the time to give effect to these provisions and/or the Novation Agreement.
- e) The Contractor shall disclose to Babcock such Confidential Information as may be required for the operation of the Contract. Where third-party consent is required before such Confidential Information can be disclosed, the Contractor shall use all reasonable endeavours to obtain such consent.

L17. TUPE – Transfer of Undertaking (Protection of Employment) Regulations 2006 (as amended in 2014).

ITT Notes to Tenderers for Contract Re-Lets [No Former Authority Staff]

Applicability Of TUPE

- a) The Contract shall be a Framework with duration of 4 years (1 year, plus 3 x 1 option years). It will cover all activity as detailed on the Schedule of Requirements (Schedule 2) and any other authorised tasks, as required. Participating suppliers on the Framework may subsequently be awarded individual Contracts under the Framework, as they occur, following a “mini – competition”, using award criteria set out in the tender documentation for each mini-competition.
- b) Your attention is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended and /or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, as amended from time to time which may be applicable for individual Contracts awarded under the Framework. The Authority would be neither transferor nor transferee of the employees in the circumstances of any Contract awarded as a result of a mini-competition and it will be your responsibility to consider whether or not TUPE applies to such mini-competition and to tender accordingly.

TUPE Information Provided For Mini-Competitions

- c) Notwithstanding paragraph 2, the Authority may, as part of the tender process for a mini-competition, express an opinion that TUPE is likely to be applicable if such mini-competition results in a Contract being placed; although the Authority shall not be liable for such opinion. In these circumstances the Authority will wish to satisfy itself that your proposals are responsibly based and take full account of your likely TUPE obligations.
- d) In these circumstances, if you have a contrary view to that of the Authority on the applicability of TUPE for a mini-competition you are strongly encouraged to submit both a TUPE and non-TUPE tender, providing a full explanation to support your view. If the Authority is satisfied by your explanation, the non-TUPE tender will be considered, otherwise the tender conforming to the Authority's view will be considered.
- e) TUPE information in respect of any then current employees may be provided by the Authority as part of a mini-competition and may be updated prior to contract award in which event the short-listed tenderers will be given an opportunity to revise or confirm tendered prices.
- f) Any TUPE provided will be obtained from the contractor currently undertaking this task. The accuracy and completeness of this information cannot be warranted by the Authority. It remains your responsibility to ensure that your response to a mini-competition takes full account of all the relevant circumstances of the mini-competition and tender accordingly. You are required to confirm when responding to any mini-competition that you will not make any claim or demand or take any actions or proceedings against the Authority (nor seek to avoid any contract or seek any amendment to a contract placed with the contractor by the Authority) arising from or relating to the provision of the information, whether or not you are awarded a contract as a result of the mini-competition. Failure to provide clear and unequivocal confirmation may result in your tender being deemed non-compliant.

Schedule 1 - Definitions of Contract

Core Definitions

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| Assets | means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract; |
| Authority | means the Secretary of State for Defence acting on behalf of the Crown; |
| Authority's Representative(s) | shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b ; |
| Business Day | means any day excluding: <ol style="list-style-type: none">Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; andsuch periods of holiday closure of the Contractor's premises of which the Authority is given written Notice by the Contractor at least ten (10) Business Days in advance; |
| Central Government Body | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ol style="list-style-type: none">Government Department;Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);Non-Ministerial Department; or Executive Agency. |
| Child Labour Legislation | means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract. |
| Conditions | means the terms and conditions set out in this document; |
| Consignee | means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be supplied; |
| Contract | means the Contract including its Schedules and any amendments agreed by the Parties in accordance with clause A2 (Amendments) ; |
| Contract Implementation Date | means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required; |
| Contract Price | 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; |

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| Contractor | means the person who, by the Contract, undertakes to provide the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority; |
| Contractor's Personnel | means all employees of the Contractor and Sub-Contractors to the Contractor who are assigned to the Contract. The Contractor shall bear full responsibility for the actions of these personnel for the duration of the Contract. |
| Contractor Commercially Sensitive Information | means the Information listed in the completed Schedule 7 - 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; |
| Contractor Deliverables | means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification; |
| Contractor's Representative | means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract; |
| Contractor's Team | means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract; |
| Control | <p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <p>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</p> <p>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</p> <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p> |
| 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; |
| DEFFORM | means the MOD DEFFORM series which can be found at https://www.gov.uk/acquisition-operating-framework/ ; |
| DEF STAN | means Defence Standards which can be accessed at https://www.dstan.mod.uk/ |
| Deliver | means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with Contract Condition "Delivery / Collection" and Delivered and Delivery shall be construed accordingly; |
| Delivery Date | 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; |
| Design Right(s) | has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988; |
| Diversion Order | means a set of procedures for urgent delivery of specified |

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|-----------------------------------|---|
| | quantities of goods that are to be supplied under Contract to consignees other than those stated in the Contract. |
| Effective Date of Contract | means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter; |
| Firm Price | means a price (Excl. VAT) which is not subject to variation; |
| Full Service Provision | means the provision by the Contractor of all of the Contractor Deliverables in accordance with the Conditions of this Contract; |
| Information | means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract; |
| Key Performance Indicators | means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management" ; |
| Legislation | means in relation to the United Kingdom: <ul style="list-style-type: none"> a. any Act of Parliament; b. any subordinate Legislation within the meaning of section 21 of the Interpretation Act 1978; c. any exercise of the Royal Prerogative; or d. any enforceable community right within the meaning of section 2 of the European Communities Act 1972; |
| Minor Change | means any change that does not significantly/materially affect the nature of the Contractor Deliverables; |
| Notices | shall mean all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract; |
| Overseas Contractor | shall mean a Contractor that is registered and/or based outside of the UK;. |
| Parties | means the Contractor and the Authority, and Party shall be construed accordingly; |
| Schedule of Requirements | means Schedule 2 (Schedule of Requirements) which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable; |
| Specification | means Schedule 6 (Statement of Work) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables; |
| Subcontractor | means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof); |
| Supported Businesses | means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market; |
| 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. |

Schedule 2 – Schedule of Requirements

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| Name and Address of Tenderer: | MINISTRY OF DEFENCE Schedule of Requirements For The provision of In-Service Support of Fire Fighting Vehicles | Contract/Tender No: IRM16/1276 Issued On: |
|-------------------------------|--|--|

Table 1 – Articles Required

| Item No. | Description | Quantity (Each unless otherwise stated) | Firm Price (£) EX VAT |
|----------|--|--|--|
| 1 | The Provision of In-Service Support for MoD Fire Fighting Vehicles Fleet , in accordance with the Statement of Work at Schedule 6 to the Contract, as authorised by Task Data Sheet (Task Data Sheet) (Schedule 12) raised by the Fire Platform Manager. | Articles under Item 1 are to be issued/surveyed/tasked on an “as required” basis | Individual prices for repair/support tasks under item 1 are to be agreed, following submission of a TDS detailing work required, in accordance with the agreed rates as detailed at Schedule 13. |

Packaging Requirements:

All Articles, post overhaul, are to be packaged by a Contractor who is approved and registered in accordance with the latest and most up to date MPAS List (Defence Packaging Accredited Package Design and Military Packaging Contractors), to the appropriate Packaging Levels (where required) in accordance with K9 “Packaging and Labelling (excluding Contractor Deliverables containing Munitions)” that is substantially similar to DEFCON 129 (Edn 03/14).

Table 2 – Delivery of Articles

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| To be completed in accordance with the timescales and delivery agreed with the Fire Platform Manager and detailed on the individual Task Data Sheets at Schedule 15. | CONDITIONS OF CONTRACT This Contract is subject to: Terms and Conditions of IRM16/1276 and Schedules detailed within. |
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Schedule 3 - Contract Data Sheet for Contract No: IRM16/1276

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| <p>Clause A9 Governing Law</p> | <p>Contract to be governed and construed in accordance with: (one must be chosen)</p> <p>English Law <input checked="" type="checkbox"/></p> <p>Scots Law <input type="checkbox"/> clause A9.b shall apply</p> <p>Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Overseas Contractors in accordance with clause A9.f (if applicable) are as follows:</p> |
| <p>Clause A22 Termination for Convenience</p> | <p>The Notice period for terminating the Contract shall be 20 Business Days.</p> |
| <p>Clause A24 Contract Period</p> | <p>Estimated Dates</p> <p>Year 1 from 09/10/2017 – 08/10/2018</p> <p>Option Years 1 from 09/10/2018 – 08/10/2019 Option Years 2 from 09/10/2019 – 09/10/2020 Option Years 3 from 09/10/2020 – 08/10/2021</p> |
| <p>Clause B1.b.(1) Contractor's Obligations – Quality Assurance</p> | <p>Is a Deliverable Quality Plan required for this Contract?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>A draft version of the deliverable quality plan must be set out as defined in AQAP 2105 and delivered to the Authority with your tender submission. This will be evaluated in accordance with evaluation detailed at Schedule 10. The Agreed Quality Plan will be submitted within 12 weeks of Contract Award and shall be incorporated into the contract (see L9 – Key Performance Indicators).</p> <p>The Contractor at all times shall have sole responsibility for the accuracy, suitability and applicability of the deliverable quality plan.</p> <p>Other Quality Assurance Requirements:</p> <p>AQAP 2105 (Edition 2) – NATO Requirements for Deliverable Quality Plans</p> <p>AQAP 2130 (Edition 3) – NATO Quality Assurance Requirements for Inspection and Test</p> <p>DEF STAN 05-61 Part 1 Issue 5 (Concessions)</p> <p>DEF STAN 05-61 Part 4 (Contractor Working Parties)</p> |
| <p>Condition C1 Contract Price (Excl. Vat)</p> | <p>All Schedule 2 line items shall be Firm Price:</p> |
| <p>Clause G1.a Payment</p> | <p>DEFFORM 30 Agreement refers (if applicable) N/A</p> |

| | |
|---|--|
| | <p>Reference: IRM16/1276</p> <p>Date:</p> |
| <p>Clause L14 Payment (for Schedule 2 items)</p> | <p>In order to facilitate payment, the Contractor shall send the following:</p> <ul style="list-style-type: none"> • Proof of delivery • Copy of the BaaN invoice • Copy of the Task Data Sheet • Copy of the worksheet <p>To:</p> <p>Fire Platform Manager I&RM Babcock Building B15 Telford TF2 8JT</p> <p>Email: Peter.dix@babcockinternational.com or Mike.jones@babcockinternational.com</p> |
| <p>Clause H1.a Progress Monitoring</p> | <p>The Contractor shall be required to attend the following meetings:</p> <p>Type: Contract Review Frequency: Quarterly Location: Babcock DSG</p> <p>The Contractor shall be responsible for the production and distribution of the agreed meeting minutes.</p> <p>No charges shall be attributed to the Authority for the attendance of Contractor Personnel.</p> <p>Meetings will evaluate and discuss (but not be limited to) the following:</p> <ul style="list-style-type: none"> • Contractor achievement of delivery times • Compliance with stated Key Performance Indicators |
| <p>Clause H1.b Progress Reports</p> | <p>The Contractor shall be required to submit the following Reports:</p> <p>Type: Progress Report Frequency: Weekly Content: Details of any work in progress and the schedule of activities planned for the following week. Method of Delivery: email Delivery Address: As detailed at Box 1 and 2 of the most recently issued DEFFORM 111.</p> |
| <p>Clause H2.b Authority's Representatives</p> | <p>The Authority's Representatives for the Contract are as follows:</p> <p>Commercial: As detailed at Box 1 of the most recently issued DEFFORM 111.</p> <p>Project Manager: as detailed at Box 2 of the most recently issued DEFFORM 111</p> <p>Payment: I&RM Accounts Payable</p> |

| | |
|--|--|
| <p>Clause H3.a.(5) Notices</p> | <p>Notices served under the Contract can be transmitted by electronic mail:</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> |
| <p>Condition K1 Certificate of Conformity (Core+ Only)</p> | <p>Is a Certificate of Conformity Required for this Contract?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>A blank example of this certificate is to be submitted with this Tender Submission.</p> <p>Line Items: all or detail individual NSNs if not applicable to all</p> <p>If Yes does the Contractor Deliverables require Traceability throughout the supply chain?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Line Items: all</p> |
| <p>Condition K2 Marking of Contractor Deliverables (Core+ Only)</p> | <p>Special Marking Requirements:</p> <p>See Schedule 5 – Statement of Work</p> |
| <p>Clause K3b Rejection (Core+ Only)</p> | <p>Time limit for rejection of the Contractor Deliverables shall be 20 Business Days.</p> |
| <p>Clause K4.a Delivery (for Schedule 2) (Core+ Only)</p> | <p>The transport requirements shown below are applicable: To be agreed on a case-by-case basis on the Task Data Sheet.</p> |
| <p>Clause K6.2 Delivery by the Contractor (for Schedule 2) (Core+ Only)</p> | <p>(Where applicable, see box K4.a.) Where applicable, will be agreed on a case-by-case basis on the Task Data Sheet.</p> <p>Special Delivery Instructions (clause K6.2: See above.</p> |
| <p>Other Addresses and Other Information (Covers forms and publications addresses and official use information)</p> | <p>See Annex A to Schedule 3 (DEFFORM 111)</p> |

Annex A to Schedule 3

1. Commercial Officer

Mena Gosling-Hughes, Bldg B15, MoD Donnington, Telford, Shropshire TF2 8JT

Email: mena.gosling-hughes @babcockinternational.com

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

Peter Dix, Technical Officer, Bldg B15, MoD Donnington, Telford, Shropshire TF2 8JT

Email: Peter.Dix@babcockinternational.com

3. Packaging Design Authority

Organisation & point of contact:

N/A

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



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

Branch/Name:

(b) U.I.N.

5. Drawings/Specifications are available from

See Box 2

6. Intentionally blank.

1. Quality Assurance Representative:

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394

9. Consignment Instructions

The items are to be consigned as follows:

As per individual orders in accordance with condition 20 at the terms and conditions

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

11. The Invoice Paying Authority (see Note 1)

I&RM Accounts Payable Manager
Babcock Ltd, Building B15, Donnington,
Telford, Shropshire TF2 8JT

E-mail: I&RM-accounts payable@babcockinternational.com

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site
Lower Arcott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

Applications via fax or email: DESLCSLS-opsformsandpubs@mod.uk

NOTES

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

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

Schedule 4 - Contract Change Process (i.a.w. clause A2.b) for Contract No: IRM16/1276

1. Authority Changes

a. Subject always to **clause A2 (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 **clause A2 (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 4.b.(1)**.

5. Contractor Changes

a. 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 3.b**, and the process at **clause 4** shall apply.

Schedule 5 – Statement of Work for Contract No: IRM16/1276

IN-SERVICE SUPPORT OF TRI-SERVICE, FIRE FIGHTING VEHICLES.

Scope of ISS

1. The contractor shall provide, **on request**, the following levels of In Service Support (ISS) for:

Tri-service Fire Fighting Vehicles

- a. Level 2: General servicing in accordance with the Cat 601 maintenance schedules of the vehicle Octad¹. Minor repair by adjustment, replacement including fault diagnosis and minor authorised modifications.

And/or

- b. Level 3-4: Repairs at a level over and above general, scheduled maintenance. This includes such operations as part reconditioning and modifications requiring special skills or special equipment, full reconditioning, major conversions and major repairs.

The definitive for repair levels are at appendix 1 attached.

2. Rectification of notified equipment failures associated with the vehicle shall be undertaken within the scope of the ISS contract unless falling into the following categories:
 - i. Accident damage.
 - ii. Unapproved modification of, or otherwise tampering with, the vehicle/equipment.
 - iii. Vehicles/equipment repairs under warranty.

3. The support required also includes, but is not limited to:

On-Site Routine vehicle servicing

The contractor is required to provide a suitably qualified technician and necessary components to perform routine 6,12 or 24 monthly vehicle servicing to the nominated vehicle at the specified military location. The contractor is required to provide all the necessary tools and equipment to carry out this tasking. Routinely a minimum of 2 weeks notice of the requirement will be given by the Authority and service date will be by mutual agreement.

On-Site Vehicle breakdown and repair

The contractor is required to provide a suitably qualified technician, spares and all the necessary tools and equipment to carry out the requirement within an agreed timescale. Routinely the repair would be required within 24 hours of notification, if due to lead times on component spares or the inability to carry out the repair at the MoD unit due to lack of facilities appropriate timescales and movement of vehicle to contractor's workshop may be agreed by mutual consent. Occasionally there may be a requirement for overseas travel.

On-site Vehicle Equipment Service and Repair.

The contractor is required to provide a suitably qualified technician, spares and all the necessary tools and equipment to carry out Webasto & Eberspacher heater servicing and repair, On-Board Godiva Water Pump service and repair, and Light Portable Pump (LPP) servicing and repair within an agreed timescales. Occasionally there may be a requirement for overseas travel.

Dry Powder Servicing and Certification

The contractor is required to provide a suitably qualified technician, spares and all the necessary tools and equipment to carry out the dry powder servicing and certification within an agreed timescale. Routinely 1 month would be given. Occasionally there may be a requirement for overseas travel to none Ops locations.

Foam Calibration and Certification

The contractor is required to provide a suitably qualified technician, spares and all the necessary tools and equipment to carry out the foam calibration and certification within an agreed timescale. Routinely 1 month would be given. Occasionally there may be a requirement for overseas travel to none Ops locations.

Bodywork, Paint, Corrosion, Mechanical System Repair and Vehicle Modification

The contractor is required to provide suitable workshop facilities to carry out Bodywork, Paint, Corrosion & Mechanical Vehicle and Fire Pump System repair and modification to agreed specification within an agreed timescale.

Post Design Services (PDS)

The contractor will be required to provide technical advice including design and engineering support on vehicle workshop manuals, component obsolescence, system requirement, safety related issues as required.

ISS Procedures

4. Required ISS assistance shall be tasked via the issuing of a Task Data Sheet (Annex C to Contract refers) by the DSG Platform Project Manager.
5. It should be noted that where notified failures fall into categories listed at para 2 i, ii and iii above, the Authority may consider utilising the Contractor's assistance and shall agree fair and reasonable prices with the Contractor, based on the actual hours reasonably expended at the rates outlined in the contract, plus the cost of parts, in accordance with DEFCON 127.
6. All spares and repairs affected under the ISS provision shall be warranted by the Contractor for a minimum period of 12 months. In the event that any defects or discrepancies arise within this period then the Contractor shall provide a replacement spare or effect the necessary repair at no cost to the Authority, save where the Contractor can demonstrate the defects are the direct cause of negligent use of the vehicle by the Authority.

Additional Services

7. The Contractor shall:
 - a. Collate all related documentation (service sheets/legal documentation) and forward to the Authority on completion of maintenance/repair action using the registration number of the vehicle as reference.
 - b. Collate all invoices relating to the repair and maintenance of the vehicles and forward single invoice to the Authority for payment. The payment method shall be as indicated in the Contract.
 - c. Notify DSG LSBU Platform Project Manager immediately of any safety related design issue that is identified during the course of the contract.

¹ The Octad is the reference publication issued by the Authority of which Cat 601 is the relevant section covering maintenance

Appendix 1 to Schedule 5

Repair levels for Ministry of Defence operated and maintained vehicles are defined as:

- Level 1. Maintenance and day by day preparation: It may include such operations as functional testing, replenishment, re-arming, role changing, minor modification, fault diagnosis and corrective maintenance by replacement, adjustment or minor repair.
- Level 2. Maintenance by replacement, adjustment or minor repair including fault diagnosis and minor authorised modifications, within times detailed within local technical instructions or by operational constraints, using generally provisioned resources.
- Level 3. Maintenance in greater depth than level 2: It includes such operations as repair, partial reconditioning and modification requiring special skills or special equipment; but which is short of complete strip, reconditioning and reassembly.
- Level 4. Maintenance that is full reconditioning, major conversions, or major repairs.

Schedule 6 - Tenderer's Commercially Sensitive Information Form
DEFFORM 539A for Tender No: IRM16/1276 (i.a.w Condition A14) (or if not applicable,
please complete as a Nil Return)

| |
|---|
| Contract No: IRM16/1276 |
| 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: Name: Position: Address: Telephone Number: Email Address: |

Additional Schedules:

Schedule 7– Export Licence (i.a.w. condition K12) for Contract No: IRM16/1276

Condition to be included in relevant subcontracts.

Export Licence

1. In this Condition the following words and expressions shall have the meanings set respectively against them:

- a. “Agreement” means this subcontract;
- b. “Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
- c. “Contract” means Contract No LSBU7/0191 [insert MOD Contract No] between the Authority and the Contractor;
- d. “Contractor” means [insert name of prime contractor];
- e. “First Party” means [insert name of purchaser];
- f. “Second Party” means [insert name of supplier].

2. In this Condition, “foreign” and “Overseas” shall be understood from the position of the Authority and be regarded as “non-UK”.

3. The Second Party shall notify the First Party promptly if the Second Party becomes aware that all or part of any article or service (including information and software) to be delivered under the Agreement is or will be subject to a non-UK export licence, authorisation or exemption or any other related transfer control that imposes or will impose end use, end user, re-export or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon nationality, affecting the Authority, the Contractor or both. This does not include the Intellectual Property-specific restrictions of the type referred to in **clause D1 (Third Party Intellectual Property – Rights and Restrictions)** of the First Party’s Conditions of Contract.

4. If requested by the First Party, the Second Party shall give the First Party a summary of every existing or expected licence and restriction referred to in **clause 3** and any related obligation or restriction to the extent that they place an obligation or restriction upon the First Party or the Authority with which the First Party or the Authority must comply, including to the extent applicable to such obligations or restrictions:

- a. the exporting nation, including the export licence number (where known);
- b. the article or service (including software and Information) affected;
- c. the nature of the restriction and obligation;
- d. the authorised end use and end users and other parties;
- e. any specific restrictions on access by third parties, or by individuals based upon their nationality, to the articles or to anything Delivered or used in the performance or fulfilment of the services; and
- f. any specific restrictions on re-transfer or re-export of the articles or of anything Delivered or used in the performance or fulfilment of the services.

The Second Party shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the First Party or the Authority must comply.

5. When an export licence is required from a foreign government for the performance of the Agreement, the Second Party shall promptly consult with the First Party on the licence requirements and, where the Second Party is the applicant for the licence:

- a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be Delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:

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

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

b. include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the [insert name of the Contractor] and the Ministry of Defence of the United Kingdom";

c. include in the submission the information that the First Party (and any intermediary parties in the supply chain, as applicable) and the Contractor will be recipients and users of the items, including information, for the performance of the Contract.

6. If the information required under **clauses 3 and 4** has been provided previously to the First Party by the Second Party, the Second Party may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of **clauses 3 and 4**.

7. If the Second Party becomes aware of any changes in the information notified previously under **clause 3, 4 or 6** that would affect the Contractor's or 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, the Second Party shall notify the First Party promptly of the change.

8. If the Second Party or any subcontractor in the performance of the Agreement needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Second Party or that subcontractor. The First Party will liaise with his purchaser to enable the Authority to provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regards to any defence or security issue that may arise.

9. Where the Agreement performance requires the export of items for which a foreign export licence is required, the Second Party shall include the dependencies for the export licence application, grant and maintenance in the Agreement risk register and in the risk management plan for the Agreement, with appropriate review points. Where there is no requirement under the Agreement for a risk management plan the Second Party shall submit an Export Licence Plan for agreement with the First Party.

10. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request that is transmitted to the Second Party by the First Party, the Second Party shall, or procure that the Second Party's subcontractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no such objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority. The First Party shall provide information, certification and other documentation necessary to support the application for the requested variation that it has received. A fair and reasonable charge for this service based on the cost of providing it will be borne by the Authority.

11. Where the Second Party subcontracts work under the Agreement, which is likely to be subject to foreign export control, the Second Party shall use reasonable endeavours to incorporate in each subcontract the same terms as set out in these **clauses 1 - 14**. Where it is not practicable to include these said terms, the Second Party shall report that fact and the circumstances to the First Party.

12. Where the First Party provides materiel (information and items, including software) to enable the Second Party to perform the Agreement, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in **clause 3**:

a. the First Party may, or at the request of the Second Party, undertake to, give the Second Party a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Second Party's ability to perform the Agreement including, to the extent applicable to the Second Party's performance of the Agreement:

- (1) the exporting nation, including the export licence number (where known);
- (2) the items or information affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
- (6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.

b. This will not include Intellectual Property specific restrictions of the type mentioned in **clause D1 (Third Party Intellectual Property – Rights and Restrictions)** in relation to the First Party's Conditions of Contract instead of the Contractor.

c. The Second Party and its subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the First Party.

d. The Second Party shall notify the First Party immediately if it is unable for whatever reason to abide by any restriction advised by the First Party to the Second Party under clause 12.

13. Where restrictions are advised by the First Party to the Second Party under **clause 12**, the First Party and the Second Party shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Agreement by the Second Party, then the First Party shall consult with the Second Party on alternative solutions and the terms of the Agreement shall be amended to give effect to the agreed solution. If no alternative solution satisfying the essential terms of the Agreement is agreed by the Parties then the First Party shall have the right to terminate the Agreement. Termination under these circumstances will be in accordance with the principles of **clause A22 (Termination for Convenience)** of the First Party's Conditions of Contract.

1. 14. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority has undertaken to provide the Second Party with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Agreement.

Schedule 8 – Acceptance Procedure (i.a.w. condition K8) for Contract No: IRM16/1276

- Clause K1b Acceptance procedure detailed within the Contract is the only acceptance procedure that applies to this Contract.

Schedule 9 - Hazardous Articles, Materials or Substances Supplied under the Contract (as relates to Clause K3) (or if not applicable, please submit a Nil return).

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

Contract No: IRM16/1276

Contract Title: In Service Support of Fire Fighting Vehicles.

Contractor:

Date of Contract:

* To the best of our knowledge there are no hazardous Articles, 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 the **SC3 Core Plus condition "Supply of Hazardous Material or Substance in Contractor Deliverables"**.

Contractor's Signature:

Name:

Job Title:

Date:

* check box () as appropriate

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)
Defence Safety Authority (DSA)
Movement Transport Safety Regulator (MTSR)
Hazel Building Level 1, #H019
MOD Abbey Wood (North)
Bristol BS34 8QW

Schedule 10: Deliverable Quality Plan Review and Evaluation Form

TO AQAP 2105 Edn.2

| | |
|-------------------------|--------------------------|
| MoD Project Team: | Supplier: |
| QP Reference No: | Issue: Date: |

| AQAP | Title | Requirement | Acceptable (Y/N) | Comments |
|-------|--|--|------------------|----------|
| 3.1.3 | General Requirement | The deliverable Quality Plan shall be clearly linked to the contract and the product | | |
| 3.2.1 | Approval / Submission | Supplier authorized personnel shall approve the Deliverable Quality Plan prior to submittal to the GQAR and/or Acquirer for evaluation. | | |
| 3.4 | Reviews, Revision and Change Control | | | |
| 3.4.1 | Review of Quality Plan | The Deliverable Quality Plan shall be reviewed periodically by the supplier within the phases through the contract life cycle. | | |
| 3.4.3 | Amendment of Quality Plan | The supplier's procedure for amending the Deliverable Quality Plan shall be included. | | |
| 3.4.4 | Change Control | The plan must be under, and demonstrate, evidence of change control. | | |
| 4.0 | Content of the Deliverable Quality Plan | | | |
| 4.1 | Link to Contract and/or Product | The content of the Deliverable Quality Plan must be adequately precise and detailed enough to reflect the ongoing supplier activities specific for the contract. | | |

| AQAP | Title | Requirement | Acceptable (Y/N) | Comments |
|------|---|--|------------------|----------|
| 4.1 | Reference to documentation | The Deliverable Quality Plan shall refer to and/or include all procedures, plans and other documents applicable to the contract. | | |
| 4.1 | Specify Activities | The Deliverable Quality Plan shall specify the activities (managerial and technical) to be implemented, either directly or by Reference to appropriate procedures and documents. | | |
| 4.2 | Project Description | The purpose and applicability of the project shall be described in a short form. | | |
| 4.3 | Acronyms, Abbreviations | All acronyms and abbreviations used in the Deliverable Quality Plan shall be listed. | | |
| 4.3 | Definitions | All definitions used in the Deliverable Quality Plan shall be listed except the contractual definitions. | | |
| 4.4 | Organisation and Responsibilities | The Deliverable Quality Plan shall include a contract specific description of the organisational structure and identify those responsible for ensuring that the required activities are carried out, including detail of those responsibilities. | | |
| 4.4 | Relationship | Relationship to the Authority shall be described. | | |
| 4.5 | Resource Management | The provision of resources, human resources, infrastructure and work environment needed to implement the contract requirements shall be specified in the Deliverable Quality Plan. | | |
| 4.6 | <p>Quality Management System Activities</p> <p>The planning of applicable quality management activities derived from the quality related requirements and risks shall be defined, but is not limited, to the processes given in the sub-paragraphs below.</p> <p>The Deliverable Quality Plan shall describe how the requirements are flowed down to the places where work is being performed.</p> | | | |

| AQAP | Title | Requirement | Acceptable (Y/N) | Comments |
|-------|--|---|------------------|----------|
| 4.6.1 | Processes (General requirements) | The Deliverable Quality Plan shall include how processes are identified along with their application, their sequence and interaction. | | |
| | | Criteria and methods to ensure that processes are effective shall be included, as well as resources to support and monitor the implementation of them. Special emphasis shall be put on special or new processes. | | |
| | | The Deliverable Quality Plan shall include how the supplier will control outsourced products, processes and activities. | | |
| | | The Deliverable Quality Plan shall include how processes are monitored, measured, analysed and continually improved. | | |
| 4.6.2 | Documentation requirements | The Deliverable Quality Plan shall describe how documentation requirements, including quality policy, quality objectives, quality manual, procedures, records and other documents are maintained and controlled, including retention periods. A document status list shall be available at all times, formalised during transitions between phases and/or baselines e.g. prior to design reviews. | | |
| 4.7 | Product Realisation Activities The planning of applicable product realisation activities derived from the quality related requirements and risks shall be defined, but is not limited, to the processes below. | | | |
| 4.7.1 | Planning of product realisation | The Deliverable Quality Plan shall describe the activities related to how the planning process for product realisation will be carried out. | | |

| AQAP | Title | Requirement | Acceptable (Y/N) | Comments |
|-------|--|---|------------------|----------|
| 4.7.2 | Customer related processes | The Deliverable Quality Plan shall describe the activities associated with the process of the determination and reviewing requirements related to the product. It shall describe the arrangements for customer communication. | | |
| 4.7.3 | Design and development | The Deliverable Quality Plan shall describe the activities related to how the supplier plans and controls the design and development of the product and how interfaces are managed. | | |
| 4.7.4 | Purchasing | The Deliverable Quality Plan shall describe how the purchasing process will be carried out, how the supplier ensures that purchased products conforms to the specified requirements. | | |
| 4.7.4 | Control of sub-suppliers | The Deliverable Quality Plan shall describe how sub-suppliers are evaluated and selected. Specific risks related with sub-suppliers or their products shall be listed and addressed. | | |
| 4.7.5 | Production and service provisioning | The Deliverable Quality Plan shall describe how the production and service provisioning is carried out under controlled conditions. | | |
| 4.7.6 | Control of monitoring and measuring devices | The Deliverable Quality Plan shall describe how monitoring and measuring devices are controlled in order to provide evidence of product conformity to contract requirements. | | |
| | | The Deliverable Quality Plan shall describe the processes used to ensure that measurement and calibration systems meet the requirements. | | |

| AQAP | Title | Requirement | Acceptable (Y/N) | Comments |
|-------|--|--|------------------|----------|
| 4.7.7 | Configuration management | The Deliverable Quality Plan shall describe the contract specific activities for configuration management and/or give reference to the required Configuration Management Plan. | | |
| 4.7.8 | Reliability and Maintainability | The Deliverable Quality Plan shall describe the contract specific activities for Reliability & Maintainability. | | |
| 4.8 | Measurement, Analysis and Improvement Activities The planning of applicable measurement, analysis and improvement activities derived from the quality-related requirements and risks shall be defined, but is not limited, to the processes below. | | | |
| 4.8.1 | Customer satisfaction | The Deliverable Quality Plan shall describe how monitoring and measurement of customer satisfaction will be carried out. | | |
| 4.8.2 | Internal audit | The Deliverable Quality Plan shall describe how internal audits will be performed in order to determine whether the Deliverable Quality Plan conforms to the requirements and is effectively implemented and maintained. | | |
| 4.8.3 | Certificate of Conformity | The Deliverable Quality Plan shall refer to the contract specific arrangements for the use of Certificate of Conformity. | | |
| 4.8.4 | Control of non-conforming product | The Deliverable Quality Plan shall describe how the contract specific requirements for identification and control of non-conformances will be carried out. | | |

| AQAP | Title | Requirement | Acceptable (Y/N) | Comments |
|-------|------------------------------|--|------------------|----------|
| 4.8.5 | Analysis of data | The Deliverable Quality Plan shall describe how analysis of data will be performed in order to demonstrate the suitability and effectiveness of the planned activities and where improvements can be made. | | |
| 4.8.6 | Improvement | The Deliverable Quality Plan shall describe how continual improvement, corrective and preventive actions will be carried out. | | |
| 4.9 | NATO Additional Requirements | The Deliverable Quality Plan shall describe how the Authority access to supplier and sub-suppliers are given and how support for GQA activities will be provided. | | |
| | | The Deliverable Quality Plan shall describe how the supplier will ensure that only acceptable products intended for delivery are released to the acquirer. | | |

| AQAP | Title | Requirement | Acceptable (Y/N) | Comments |
|--------|--|---|------------------|----------|
| 4.10 | Referenced Documents | | | |
| 4.10.1 | Contractual documents | Where applicable, the Deliverable Quality Plan shall refer to other plans or their appropriate sections and quality related contractual documents. | | |
| | | The interfaces and relationships to these and other planning documents required in contracts shall be described. | | |
| 4.10.2 | Supplier internal quality related documents | Where applicable, the Deliverable Quality Plan shall refer to the supplier's Quality Management System. | | |
| 4.10.3 | Other documents | The Deliverable Quality Plan shall list other relevant and contract related documents. | | |
| 4.10.4 | Order of precedence | The order of precedence of referenced documents and their relationship to the contract, including the Deliverable Quality Plan, shall be specified. | | |

Additional Comments:

This Quality Plan is Accepted / Not Accepted *

Name:

Signature

Post:

Date:

** Delete as applicable*

Schedule 11 – Purchase Order Template

DSG

PLEASE PROCEED WITH THE SUPPLY
OF GOODS/SERVICE AS DESCRIBED
IN THIS ORDER.

Purchase Order No:

Page:

Date:

PURCHASE ORDER NUMBER MUST APPEAR ON ALL RELATED DOCUMENTS. FAILURE TO COMPLY MAY RESULT IN DELAYED PAYMENT.

| | |
|---|---|
| <p>SHIP TO ADDRESS</p> <p>DELIVERY ADDRESS HERE</p> <p>Tel: Fax:</p> | <p>INVOICE TO ADDRESS</p> <p>I&RM Accounts Payable Project Mgr Babcock DSG, Building B15, Donnington, Telford, Shropshire, TF2 8JT, GB</p> <p>Tel: Fax:</p> |
| <p>SUPPLIER</p> <p>SUPPLIERS ADDRESS HERE</p> <p>Tel: Fax:</p> | <p>Authorised Signature -</p> <p>Authorised by - ORIGINATORS DETAILS HERE Contact - Fax Number - Email FIRSTNAME.LASTNAME@babcockinternational.com</p> |

This Purchase Order shall be subject to the Terms and Conditions detailed in the Contract identified on the PO Line.

Currency:

| Line Item No | Item Description | Supplier Item No | Qty | Unit | Req Date | Price | Unit | Discount | Total (EX VAT) |
|--------------|------------------|------------------|-----|------|----------|-------|------|----------|----------------|
|--------------|------------------|------------------|-----|------|----------|-------|------|----------|----------------|

SPECIAL INSTRUCTIONS:-

Terms of Delivery: ;

| |
|---|
| Acknowledged by: Signed: Date..... In the capacity of:..... |
|---|

| |
|--|
| Order Disc Total (Excl VAT) Total Value of Order |
|--|

Terms and Conditions

A Delivery Note must accompany each order delivered and must be marked with PO number, MSN and Qty (Ideally in a Human Readable Barcode 39).

VAT Registered: 754 810 329

Schedule 12 – Task Data Sheet – IRM16/1276 (Different for each ITT)

Schedule 13 – IRM16/1276 - Firm Pricing – To be issued on Contract Award (to be completed as part of the Tender Submission)

1. LABOUR RATES (FIXED)

| | YEAR 1 | YEAR 2 | YEAR 3 | YEAR 4 |
|------------|--------|--------|--------|--------|
| Grade | £ | £ | £ | £ |
| Technician | £ | £ | £ | £ |

2. PRICING MARK UP - MATERIAL (Replacement Parts)

| |
|---|
| Mark Up (%) for the Duration of the Contract on parts used during repair of Equipment |
| % |

3. TRAVEL AND SUBSISTENCE FOR YEARS 1 – 4*

| Hourly Travel Rate | Mileage Rate | Accommodation / Subsistence |
|--------------------|--------------|-----------------------------|
| £ | £ | £ |

*Transport costs incurred shall be quoted / claimed as actuals only

4. CONTRACTED OUT SERVICES / WORKS*

Any contracted out services / works shall be subject to a profit rate only

| |
|---|
| Profit rate (%) for the Duration of the Contract on parts used during repair of Equipment |
| % |

Schedule 14: Sample Novation Agreement (only to be used if becomes necessary to novate Contract)

DATED

AGREEMENT TO NOVATE A CONTRACT

between

CONTINUING PARTY

and

[SECRETARY OF STATE FOR DEFENCE]

and

[BABCOCK DSG LIMITED]

THIS AGREEMENT is dated [DATE]

PARTIES

[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Continuing Party**).

[SECRETARY OF STATE FOR DEFENCE] (**MoD**).

[BABCOCK DSG LIMITED] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Babcock**).

BACKGROUND

The Continuing Party and the MoD are party to a contract for [DESCRIBE CONTRACT] dated [DATE] (the **Contract**).

The MoD and Babcock entered into a Land Equipment Service Provision and Transformation Contract dated 31 March 2015 (the **SPC**) in respect of which certain services transfer, on a phased basis, from the MoD to Babcock. The MoD wishes to transfer its rights and obligations under the Contract to Babcock as part of the transfer of services under the SPC.

The MoD shall continue to be liable for any failure by it to perform its obligations under the Contract before the Effective Date, with Babcock assuming responsibility for all other liabilities so arising in the MoD's place.

The parties have therefore agreed to novate the MoD's rights, obligations and liabilities under the Contract to Babcock on the terms of this agreement with effect from [DATE] (**Effective Date**).

AGREED TERMS

NOVATION

With effect from the Effective Date, the MoD transfers all its rights and obligations under the Contract to Babcock. Babcock shall enjoy all the rights and benefits of the MoD under the Contract, and all references to the MoD in the Contract shall be read and construed as references to Babcock.

Babcock agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the MoD.

The Continuing Party agrees to perform the Contract and be bound by its terms in every way as if Babcock were the original party to it in place of the MoD.

RELEASE OF OBLIGATIONS AND LIABILITIES

The Continuing Party and the MoD release each other from all future obligations to the other under the Contract.

Nothing in this agreement shall affect or prejudice any claim or demand that the Continuing Party or the MoD may have against the other under or in connection with the Contract arising before the Effective Date.

GOVERNING LAW

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Signed

for and on behalf of [SECRETARY OF STATE FOR DEFENCE]

Date

Signed

for and on behalf of [BABCOCK DSG LIMITED]

Date

Signed

for and on behalf of [CONTINUING PARTY]

Date

Schedule 15: Transfer of Undertakings (Protection of Employment) Regulations 2014 (TUPE) – Employee Transfer Arrangements on entry (Part 1) and exit (Part 2) and Appendix 1 & 2.

TRANSFER REGULATIONS

PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

1.1 In this Schedule [X] Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule [X] Part 1 unless the context otherwise requires:

“DPA” means Data Protection Act 1998 as amended or replaced from time to time;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority Employee, a Previous Contractor Employee or an Unexpected Employee;

"New Provider" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"Previous Contractor" means [insert details of any outgoing contractor. Ensure that any sub-contractors from whom employees may transfer are included];

"Previous Contractor Employee" means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

“Services” shall have the meaning specified in [project team to complete];

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2 PREVIOUS CONTRACTOR EMPLOYEES

2.1 Employee Information

- 2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule [X] Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the DPA and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

2.2 Obligations in respect of Previous Contractor Employees

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments

in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

2.3 Indemnities

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
- (d) Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL

3.1 Contractor Indemnity

3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

3.2 Post Transfer Reporting

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;

- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1. Pursuant to paragraph 2.1.1 of this Schedule [X] Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 **Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

1.2 **Performance Appraisal**

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

1.4 **Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

1.5 **Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

1.6 **Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and

- d) Information about any maternity or other statutory leave or other absence from work.

Part B

1.6 Information to be provided 28 days prior to the Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

2. DEFINITIONS

2.1 In this Schedule [X] Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule [X] Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule [X] Part 1 of the Contract.

2.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule [X], Part 1, in this Schedule [X] Part 2 unless the context otherwise requires:

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

"Subsequent Relevant Transfer" means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

"Subsequent Transfer Date" means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

"Subsequent Transferring Employee" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate .

3. EMPLOYMENT

3.1 Information on Re-tender, Partial Termination, Termination or Expiry

3.1.1 No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

(a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;

(b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule [X] Part 2 relating to the employees who are wholly or mainly employed, assigned or

engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
- (e) inform the Authority of any changes to the information provided under paragraph 3.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.

3.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule [X] (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
- (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
- (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

3.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule [X] (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.

3.1.4 Paragraphs 3.1.1 and 3.1.2 of this Appendix are subject to the Contractor's obligations in respect of the DPA and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 3.1.1 and 3.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to

such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

3.1.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 3.1.1, 3.1.2, 2.1.3 or 3.1.5 of this Schedule [X] Part 2.

3.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule [X] Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

3.2 **Obligations in Respect of Subsequent Transferring Employees**

3.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to

implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and

- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

3.3 **Unexpected Subsequent Transferring Employees**

3.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
 - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;

- (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
 - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred;

3.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 3.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 3.3.

3.4 **Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

3.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

3.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal

costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

- 3.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 3.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

3.5 Contracts (Rights of Third Parties) Act 1999

- 3.5.1 A New Provider may enforce the terms of paragraph 3.3 and 3.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 3.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 3.5.3 Nothing in this paragraph 2.6 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

3.6 General

- 3.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule [X] where such Costs and/or losses are recoverable by the

Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Schedule [X], the following information will be provided:
 - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
 - d) Total redundancy liability including any enhanced contractual payments;

2. In respect of those employees included in the total at 1(a), the following information:
 - a) Age (not date of Birth);
 - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
 - c) Length of current period of continuous employment (in years, months) and notice entitlement;
 - d) Weekly conditioned hours of attendance (gross);
 - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - f) Pension Scheme Membership;
 - g) Pension and redundancy liability information;
 - h) Annual Salary;
 - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - k) Regular/recurring allowances;
 - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);

3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.

4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

Part A

4. Pursuant to paragraph 3.1.2 of this Schedule [X], part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

4.1 Personal, Employment and Career

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

4.2 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

4.3 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

4.4 **Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

4.5 **Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

4.6 **Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;

- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

Part B

4.7 Information to be provided 28 days prior to the Subsequent Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.