



Defence
Infrastructure
Organisation

Call-Off Schedule 17

MOD Terms

Built Estate

REF: RM6089

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CALL-OFF SCHEDULE 17

MOD Terms

1. INTELLECTUAL PROPERTY RIGHTS

Clause 9 of the Core Terms shall be disapplied and replaced with the following wording:

- 1.1 Subject to the retention by the Supplier, or the third-party owner (as the case may be) of the Supplier's Existing IPR, and where appropriate a license back to the Supplier to use the IP Materials for all purposes connected with this Contract, the Supplier assigns (or ensures that the third-party owner assigns) to the Buyer, with full title guarantee, all IPR which may subsist in the IP Materials specific to Contract. These assignments take effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the IPR produced by the Supplier or the third-party owner (as the case may be). The Supplier executes (or ensures that the third-party owner executes) all documentation necessary to execute these assignments.
- 1.2 The Supplier does not, and procures that the Supplier Staff do not, (except when necessary for the performance of this Contract) without prior written consent of the Buyer, use or disclose any IPR in the IP Materials specific to Contract or the New IPR.
- 1.3 All New IPR whether created by the Supplier or any of the Supplier Staff or a third party belongs to the Buyer and all Existing IPR furnished or made available to the Supplier by or on behalf of the Buyer remains the property of the Buyer.
- 1.4 The Supplier waives or procures a waiver of any moral rights subsisting in copyright produced for this Contract.
- 1.5 The Supplier ensures that the third-party owner of any Existing IPR in IP Materials that are delivered by or on behalf of the Supplier in relation to the performance by the Supplier of its obligations under this Contract grants to the Buyer a non-exclusive licence or, if itself a licensee of those rights, grants to the Buyer an authorised sub-licence, to use, reproduce, modify, develop and maintain the IPR in the same. Such licence or sub-licence is non-exclusive, perpetual, royalty free and irrevocable and includes the right for the Buyer to sub-licence to other Government departments, any replacement Supplier or to any other third party.
- 1.6 The Supplier does not infringe any IPR of any third party in providing the Deliverables and the Supplier, from the date of this Contract indemnifies and keeps indemnified and holds the Buyer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Buyer may suffer or incur as a result of or in connection with any breach of this Paragraph, except where such claim arises from the use of data supplied by the Buyer which is not required to be verified by the Supplier under any provision of this Contract.
- 1.7 The Buyer notifies the Supplier in writing of any claim or demand brought against the Buyer for infringement or alleged infringement of any IPR in materials supplied or licensed by the Supplier.

- 1.8 The Supplier at its own expense conducts all negotiations and any litigation arising in connection with any claim for breach of IPR in materials supplied or licensed by the Supplier, provided always that the Supplier:
- 1.8.1 consults the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 1.8.2 takes due and proper account of the interests of the Buyer; and
 - 1.8.3 does not settle or compromise any claim without the Buyer's prior written consent (not to be unreasonably withheld or delayed).
- 1.9 The Buyer at the Supplier's request affords to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Buyer or the Supplier by a third party for infringement or alleged infringement of any third party IPR in connection with the performance of the Supplier's obligations under this Contract and the Supplier indemnifies the Buyer for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 1.10 The Buyer does not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any IPR by the Buyer or the Supplier in connection with the performance of its obligations under this Contract.
- 1.11 If a claim, demand or action for infringement or alleged infringement of any IPR by the Supplier is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier notifies the Buyer as soon as reasonably practicable and, at its own expense and subject to the consent of the Buyer (not to be unreasonably withheld or delayed), uses its best endeavours to:
- 1.11.1 modify any Deliverables without reducing the performance or functionality of the same, or substitute alternative Deliverables of equivalent performance and functionality, to avoid the infringement or the alleged infringement, provided that the provisions herein apply mutatis mutandis to such modified or substituted Deliverables; or
 - 1.11.2 procure a licence to use and provide any part of the Deliverables, which is the subject of the alleged infringement, on terms which are acceptable to the Buyer;
 - 1.11.3 and in the event that the Supplier is unable to comply with these requirements within twenty-eight (28) days of receipt of the Supplier's notification this shall constitute a material default by the Supplier under the Contract and the Buyer may terminate the Contract in accordance with Clause 10.4 of the Core Terms.
- 1.12 Where the Supplier secures a licence from a third party in any software for the provision of part of the Deliverables it will do so in the name of the Buyer in perpetuity with the right to sublicense to any third party nominated by the Buyer for the purposes of performing any part of the Deliverables which is provided at any time pursuant to this Contract.
- 1.13 Where the Supplier uses any of its own software for the provision of any Deliverables it will grant a free irrevocable licence to the Buyer in perpetuity with

the right to sublicense to any third party nominated by the Buyer to use the software for the purposes of continuing to operate any part of the Deliverables provided at any time under this Contract.

- 1.14 Authorisation by the Crown for use of Third Party Intellectual Property Rights: Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Buyer and placement of any contract task under it does not constitute an authorisation by the Crown (Buyer) under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any such authorisation by the Buyer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

2. JURISDICTION

- 2.1 Each Party submits and agrees to the exclusive jurisdiction of the Courts of England and Wales to resolve any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- 2.2 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 and for the enforcement of any judgment, order or award given under English jurisdiction

3. DISPUTE RESOLUTION

Clause 34 of the Core Terms shall be disapplied and shall be replaced by the wording in this paragraph below.

- 3.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this 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 (ADR) procedure on which the Parties may agree.
- 3.2 In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 3.3 The Party initiating the arbitration shall give a written Notice of Arbitration to the other Party. The Notice of Arbitration shall specifically state:
- 3.3.1 that the dispute is referred to arbitration; and
 - 3.3.2 the particulars of the Contract out of or in relation to which the dispute arises.
- 3.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Paragraph shall be governed by the provisions of the Arbitration Act 1996.
- 3.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

- 3.6 For the avoidance of doubt, it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

4. THIRD PARTY RIGHTS

Clause 19 of the Core Terms shall be disapplied and replaced with the wording in this paragraph.

- 4.1 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 whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

5. REDUNDANT MATERIAL

- 5.1 All Redundant Material resulting from work carried out under, or procured for the purposes of the Contract, the costs of which have been paid by the Buyer under the Contract, or which is otherwise owned by the Buyer, shall be disposed of as follows:
- 5.1.1 On completion of the Contract or earlier if appropriate, the Supplier shall prepare:
 - 5.1.1.1 a list of those items of the Redundant Material referred to above which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and
 - 5.1.1.2 a list of those items of the Redundant Material which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.
 - 5.1.2 The Supplier shall send the lists (as per paragraph 5.1.1) to the Buyers Authorised Representative named in the Contract.
 - 5.1.3 Within three months of the date of receipt of the lists, the Buyer shall issue disposal instructions to the Supplier. Such disposal instructions shall require that the items of Redundant Material are either:
 - 5.1.3.1 transferred to other subsisting contracts; or
 - 5.1.3.2 subject to contract, retained by the Supplier for use in the performance of future contracts placed with the Supplier; or
 - 5.1.3.3 subject to contract, repaired by the Supplier; or
 - 5.1.3.4 at the direction of the Buyer, sold by the Supplier, acting on behalf of the Buyer, for the best price reasonably obtainable; or

- 5.1.3.5 dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.
- 5.2 The proceeds of the sale of items of Redundant Material shall be credited to the Buyer in accordance with arrangements made between the Supplier and the Buyer.
- 5.3 A list of the items sold by the Supplier shall be sent to the Buyer Authorised Representative specified in the Contract together with a statement of the proceeds of sale.

6. ISSUED PROPERTY

- 6.1 NOT USED.
- 6.2 Within 14 days of receipt of any Issued Property provided by the Buyer, or such other longer period as may be specified in this Contract, the Supplier shall:
 - 6.2.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
 - 6.2.2 conduct a reasonable visual inspection; and
 - 6.2.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;
 - 6.2.4 and notify the Buyer of any defects, deficiencies or discrepancies discovered.
- 6.3 Where Issued Property is packaged it will not be unpacked earlier than is necessary. The period identified at Paragraph 6.2 above shall count from the date on which packages are opened.
- 6.4 The Buyer will within a reasonable time after receipt of any notice under Paragraph 6.2 replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Buyer Authorised Representative will revise the delivery schedule. If appropriate, the Buyer Authorised Representative will also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 6.5 In the event that the Buyer fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Paragraph 6.2, this shall be deemed to be an Authority Cause and the Supplier shall be entitled to an extension to any affected agreed date for providing Deliverables, provided that the Supplier has taken all reasonable measures to mitigate the consequences of any such delay.
- 6.6 Paragraphs 6.2 – 6.5 do not apply in the following circumstances:
 - 6.6.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property will be as specified in this Contract;
 - 6.6.2 where the Supplier can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property will be as specified in this Contract.

- 6.7 Subject to Paragraph 6.10 below and any limitation or exclusion of liability as may be specified in this Contract, the Supplier will be responsible for the safe custody and due return of Issued Property and will be responsible for all loss or damage thereto, until re-delivered in accordance with the Buyer's instructions or until the expiry of the period specified in Paragraph 6.11.
- 6.8 The Supplier will be responsible for such calibration and maintenance of the Issued Property as notified by the Buyer.
- 6.9 If requested, the Buyer, within a reasonable time, and where practicable before delivery of the Issued Property, will notify the Supplier of the value of the Issued Property.
- 6.10 The Supplier will not be liable in respect of:
- 6.10.1 defects or deficiencies notified to the Buyer in accordance with Paragraph 6.2 or latent defects which the Supplier can show could not reasonably have been discovered by means of the activities described at Paragraph 6.2;
 - 6.10.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Supplier);
 - 6.10.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract;
 - 6.10.4 any loss or damage to Issued Property arising from:
 - 6.10.4.1 aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
 - 6.10.4.2 ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - 6.10.4.3 the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
 - 6.10.4.4 riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.
- 6.11 At the end of the Contract Period the Supplier will forward a list of Issued Property still held, to the Buyer Authorised Representative. Return or disposal of such Issued Property will be as instructed by the Buyer or Buyer Authorised Representative at Contract completion. If no disposal instructions are specified in this Contract the Buyer Authorised Representative will provide such instructions within two months of the Supplier's written request to do so.

7. LOSS OF OR DAMAGE TO GOODS

Clause 3.2.4 of the Core Terms shall be disapplied and shall be replaced with the following wording.

- 7.1 Until Delivery, the risk of loss of or damage to the Goods remains with the Supplier. Without prejudice to any other rights or remedies of the Buyer, the

Supplier shall make good any such loss or damage however caused or occasioned which occurs before Delivery.

7.2 Paragraph 7.1 shall apply notwithstanding:

7.2.1 that the Goods may have been inspected by the Buyer; or

7.2.2 that the property therein may have passed earlier than upon Delivery.

7.3 Unless otherwise agreed and save for the provisions of Paragraph 7.4, the Supplier shall not after Delivery be at risk in respect of the Goods, except where the Goods do not conform as required by clause 3.2.12 of the Core Terms, in which case the risk in those Goods shall revert to the Supplier on the earlier of:

7.3.1 the removal of the Goods by the Supplier; or

7.3.2 the close of business on the last day of the period in which the Supplier is required to remove those Goods; or

7.3.3 the return of the Goods by the Buyer.

7.4 Notwithstanding the provisions of Paragraph 7.3, if the Supplier has given notice of objection he shall not be at risk in respect of the rejected Goods where a dispute between the parties relating to the rejection remains unresolved and the Goods remain in the possession of the Buyer.

8. CO-OPERATION ON EXPIRY OF CONTRACT

Clause 10.5.6 of the Core Terms shall be disapplied and replaced with the following wording.

8.1 Upon the expiry of the Contract for whatever reason the Supplier agrees to co-operate with the Buyer to such extent as he may be reasonably required to do so for a period of up to 6 months from the date of expiry, such period to be determined by the Buyer, to ensure an orderly and efficient transition from the management by the Supplier to management by the Buyer or some other person.

8.2 The Buyer and the Supplier shall agree a fair and reasonable price for satisfying the provisions of this Paragraph 8, if this is done at no cost to CCS.

9. MARKING OF GOODS

This paragraph supplements clause 3.2.8 of the Core Terms.

9.1 Goods shall be marked in accordance with the procedure laid out in the Contract. In the absence of any requirements, the Goods shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number shown in the Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Goods.

9.2 The marking shall include any serial numbers allocated to the Goods.

9.3 Where because of their size or nature it is not possible to mark Goods with the required particulars, the required information should be included on the package or carton in which the Goods are packed.

10. VESTING

Clause 3.2.3 of the Core Terms shall be disapplied and shall be replaced with the following wording.

- 10.1 Subject to the following provisions of this Paragraph any Goods which the Supplier acquires or allocates for the purpose of being incorporated within the Buyer Assets or for the purpose of forming any part of the Deliverables shall vest in and become the absolute property of the Buyer as from the time the provision of the relevant part of the Deliverables begins or (if earlier) from the time the Goods are first acquired or specifically allocated for incorporation into the Buyer Assets or as part of the Deliverables and shall from that time be in the possession of the Supplier for the sole purpose of providing the Deliverables and/or incorporating the same into the Buyer Assets and shall not be within the control or disposition of the Supplier other than for that purpose.
- 10.2 Notwithstanding the vesting of any Goods prior to their incorporation within the Buyer Assets or as part of the Deliverables under the terms of this Paragraph 10 the Supplier shall remain responsible for any loss or damage to them.
- 10.3 Neither the Supplier nor Supplier Staff nor any third party will have a lien on any part of the Deliverables (or any Goods associated thereto) which have vested in the Buyer for any sum due to the Supplier, the Supplier Staff or any third party. The Supplier will take all reasonable steps necessary to ensure that the provisions of this Paragraph are brought to the notice of all Supplier Staff and any third parties dealing with any such parts of the Deliverable.
- 10.4 The Supplier will ensure that from the time when the provision of the Deliverables begins, or as soon as practicable thereafter, or when any Goods are acquired specifically for or are allocated for incorporation in any of the Deliverables, they are marked or recorded so that they are readily identifiable as the property of the Buyer. The Supplier will comply with any direction given by the Buyer in this respect.
- 10.5 Any Goods which are rejected by the Buyer will immediately re-vest in the Supplier.
- 10.6 If the Buyer terminates this Contract then, without prejudice to any other right the Buyer may have, any Goods which have not been incorporated into the Deliverables will re-vest in the Supplier on the expiration of 30 days from the date in which such termination takes effect unless the Buyer gives the Supplier written notice that the Buyer elects to retain the property in such Goods.
- 10.7 Any payment made by the Buyer in respect of any Goods which re-vests in the Supplier will be recoverable from the Supplier.
- 10.8 The Supplier will hand over to the Buyer any Goods in which the Buyer has elected to retain the property under Paragraph 10.6. If the Supplier fails to do so, the Buyer will have the right to enter the Supplier's premises and remove Goods and recover the cost of doing so from the Supplier.
- 10.9 The Buyer will pay a fair and reasonable price for any Goods, in which he has elected to retain the property under Paragraph 10.6, and which are handed over to him by the Supplier or otherwise come into its possession.

- 10.10 Where any Goods in the Buyer's possession or control has re-vested in the Supplier in accordance with clauses 10.6 or 10.7, the Supplier will bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in this Contract. If the Goods are on the premises of the Buyer or the premises of any Government Department (including any agencies thereof), the Supplier will remove them within fourteen days of their re-vesting.

11. TAX COMPLIANCE

Warranty

- 11.1 The Supplier represents and warrants that at the date this Contract came into effect, it has notified the Buyer in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the Supplier to notify OOTNC

- 11.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Supplier shall:
- 11.2.1 notify the Buyer in writing of such fact within 20 Working Days of its occurrence; and
 - 11.2.2 promptly provide to the Buyer:
 - 11.2.2.1 details of the steps which the Supplier is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - 11.2.2.2 such other information in relation to the OOTNC as the Buyer may reasonably require.
- 11.3 For the avoidance of doubt, the obligation at Paragraph 11.2 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Buyer can understand the nature and seriousness of the OOTNC.
- 11.4 The Buyer shall be entitled to terminate the Contract in accordance with clause 10.4.1 of the Core Terms in the event that:
- 11.4.1 the warranty given by the Supplier pursuant to paragraph 11.1 is materially untrue; or
 - 11.4.2 the Supplier commits a material breach of its obligation to notify the Buyer of any OOTNC as required by paragraph 11.2; or
 - 11.4.3 the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Buyer, are acceptable, all of which shall constitute a material default for the purposes of clause 10.4.1 of the Core Terms.
- 11.5 In the event that the Buyer terminates the Contract under paragraph 11.4, the Buyer shall be entitled to recover from the Supplier:
- 11.5.1 the amount of any loss resulting from the termination; and

11.5.2 any other loss sustained in consequence of any breach of this Condition.

Duties of the Buyer

11.6 In exercising its rights or remedies under this paragraph 11, the Buyer shall:

11.6.1 act in a reasonable and proportionate manner taking into account, among other things:

11.6.1.1 the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

11.6.1.2 any remedial action taken by the Supplier to prevent reoccurrence of the OOTNC.

11.6.2 Without prejudice to paragraph 11.6, seriously consider, where appropriate, action other than termination of the Contract to deal with the failure by the Supplier to comply with this paragraph 11.

12. TIMBER AND WOOD CONTAINING PRODUCTS SUPPLIED UNDER THIS CONTRACT

12.1 The Supplier will comply with the Buyer's policy on procurement of timber and wood-containing products. The Supplier will ensure that:

12.1.1 all timber and wood-containing products ("Timber"), delivered to the Buyer under the Contract or consumed during performance of the Contract will derive from trees or other plants that have been harvested and exported in strict accordance with the applicable law or laws of the country in which the trees or other plants grew; and

12.1.2 where any Timber delivered to the Buyer under the Contract or consumed during performance of the Contract derives from any species of tree, trade in which is regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), the Supplier will comply with the CITES requirements that permit trade in that species of tree; and

12.1.3 all Timber, including, but not limited to joinery, fittings, furniture, veneers and non-returnable packaging delivered to the Buyer under the Contract or consumed during performance of the Contract are derived from timber lawfully obtained from forests and plantations which are managed to sustain their biodiversity, productivity and vitality, and to prevent harm to other ecosystems and any indigenous or forest-dependent people.

12.2 In respect of each delivery of Timber to the Buyer under the Contract, and all Timber consumed during performance of the Contract:

12.2.1 the Supplier will obtain and retain documentary evidence that such Timber has been procured in accordance with Paragraph 12.1;

12.2.2 such documentary evidence will include, but may not be limited to, certification by properly accredited organisations to meet the standards set by the Forest Stewardship Council or equivalent body. The Supplier will be responsible for demonstrating the authenticity of such certification; and

- 12.2.3 where the Timber to be delivered under the Contract or consumed during performance of the Contract is tropical hardwood, the Supplier will obtain independent verification of the documentary evidence required under this Paragraph.
- 12.3 The Buyer reserves the right at any time during the performance of the Contract and for a period of 6 years from the End Date to require the Supplier to produce the documentary evidence, and independent verification where applicable, required by Paragraph 12.2, for the Buyer's inspection within 14 days of the Buyer's written request.
- 12.4 The Supplier will provide to the Buyer such data or information as the Buyer requires in respect of Timber delivered to the Buyer. The Supplier will send all completed information, including nil returns where appropriate, to the Buyer Authorised Representative.
- 12.5 The Supplier will provide all documentary evidence, independent verification, data and other information required by this Paragraph in a form acceptable to the Buyer, which may include electronic means.
- 12.5.1 The Supplier must comply with clause 3.2.12 of the Core Terms in respect of any Timber delivered which does not comply with the provisions of Paragraph 12.1, or for which the Supplier has not obtained such documentary evidence or independent verification of such evidence as required by Paragraph 12.2.
- 12.5.2 The obligations of this Paragraph 12 do not extend to the delivery of reclaimed or recycled Timber, which may be used where it fully meets the Contract requirements.
- 12.5.3 The Supplier will place similar obligations on its Subcontractors and will require its Subcontractors to flow down similar obligations to all levels in the supply chain. The Supplier will comply with the Buyer's policy on procurement of timber and wood-containing products.

13. IMPORT AND EXPORT LICENCES

UK Import and Export Licences

- 13.1 If, in the performance of the Contract, the Supplier needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Buyer and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Supplier. The Buyer shall provide the Supplier with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

Obtaining a Licence or authorisation from a foreign government – Supplier obligations

- 13.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Supplier shall as soon as reasonably practicable consult with the Buyer on the licence requirements. Where the Supplier is the applicant for the licence or authorisation the Supplier shall:
- 13.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any Deliverable (which for the purposes of this Paragraph shall also include information, technical data and software), the Supplier, unless otherwise agreed with the Buyer, shall identify in the application:
 - 13.2.1.1 the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
 - 13.2.1.2 the end use as: For the Purposes of HM Government; and
 - 13.2.2 include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- 13.3 If the Supplier or any Subcontractor in the performance of the Contract needs to export material not previously supplied by or on behalf of the Buyer for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Supplier or that Subcontractor. For the purposes of this Paragraph material shall mean information, technical data and items, including Goods, components of Goods and software.
- 13.4 Where the Contract performance requires the export of material for which a foreign export licence or import licence or authorisation is required, the Supplier shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract Risk Register and in the Risk Management Plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan, the Supplier shall submit this information to the Buyer's Authorised Representative.
- 13.5 During the term of the Contract and for a period of up to 2 years from completion or termination of the Contract, the Buyer may make a written request to the Supplier to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Buyer to re-export or re-transfer a licensed

or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Buyer makes such a request it will consult with the Supplier before making a determination of whether the Buyer or the Supplier is best placed in all the circumstances to make the request. Where, subsequent to such consultation the Buyer notifies the Supplier that the Supplier is best placed to make such request:

- 13.5.1 the Supplier shall, or procure that the Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Supplier has an objection, the Parties shall meet within 5 Working Days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
- 13.5.2 the Buyer shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 13.6 Where the Buyer determines that it is best placed to make such request the Supplier shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Buyer to make the application for the requested variation.
- 13.7 Where the Buyer invokes Paragraph 13.5 or 13.6 the Buyer will pay the Supplier a fair and reasonable charge for this service based on the cost of providing it.
- 13.8 Where the Supplier subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Supplier shall use reasonable endeavours to incorporate in each Sub-contract equivalent obligations to those set out in this Paragraph 13. Where it is not possible to include equivalent terms to those set out in this Paragraph, the Supplier shall report that fact and the circumstances to the Buyer.

Obtaining a Licence or authorisation from a foreign government – Buyer obligations

- 13.9 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Buyer shall provide the Supplier with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign government in respect of the performance of the Contract.
- 13.10 The Buyer shall provide such assistance as the Supplier may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

Supplier obligation to provide information

13.11 The Supplier shall use reasonable endeavours to identify whether any Deliverable is subject to:

13.11.1 a non-UK export licence, authorisation or exemption; or

13.11.2 any other related transfer or export control, that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality.

13.12 If at any time during the term of the Contract the Supplier becomes aware that all or any part of the Deliverables are subject to Paragraph 13.11.1 or 13.11.2, it shall notify the Buyer of this as soon as reasonably practicable by providing details in a mutually agreed format. Such notification shall be no later than 30 days of knowledge of any affected Deliverable and in any event, such notification shall be not less than 30 days prior to delivery of the Deliverables.

13.13 If the information to be provided under Paragraph 13.12 has been provided previously to the Buyer by the Supplier under the Contract, the Supplier may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Paragraph 13.12.

13.14 During the term of the Contract, the Supplier shall notify the Buyer as soon as reasonably practicable of any changes in the information notified previously under Paragraph 13.12 or 13.13 of which it becomes or is aware that would affect the Buyer's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Paragraphs.

13.15 For a period of up to 2 years from the End Date and in response to a specific request by the Buyer, the Supplier shall notify the Buyer as soon as reasonably practicable of any changes in the information notified previously under Paragraph 13.12 or 13.13 of which it becomes aware that would affect the Buyer's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses.

13.16 Where following receipt of material from a Subcontractor or any of its other suppliers' restrictions are notified to the Supplier by that Subcontractor, supplier or other third party or are identified by the Supplier, the Supplier shall immediately inform the Buyer. Within 10 days of such notification, the Supplier shall propose to the Buyer actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Buyer shall notify the Supplier within 10 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

13.17 If the restrictions prevent the Supplier from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Buyer may at its absolute discretion elect to amend the contract or to terminate the Contract. Except as set out in Paragraph 13.18, in the event of termination in these circumstances, termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the

Contract, costs incurred by the Supplier and benefits received by the Buyer. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

13.18 In the event that the restrictions notified to the Buyer pursuant to Paragraph 13.12 were known or ought reasonably have been known by the Supplier (but were not disclosed) at contract award or if restrictions notified to the Buyer pursuant to Paragraph 13.14 or 13.16 were known or ought reasonably to have been known by the Supplier at the date of submission of the most recent information submitted to the Buyer in accordance with Paragraph 13.12, termination under Paragraph 13.17 will be in accordance with clause 10.4.1 of the Core Terms (on the basis that the Supplier has committed a material default) and the provisions of Paragraph 13.22 will not apply.

Buyer obligation to provide information

13.19 The Buyer shall use reasonable endeavours to identify any export control restrictions applying to the Issued Property as GFA. Where the Buyer is to provide material necessary to enable the Supplier to perform the Contract or in respect of which the Deliverables are to be provided, and that material is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Paragraph 13.11 above, the Buyer shall provide up to date information to the Supplier within 30 days of the date of knowledge and in any case not later than 30 days prior to the delivery of such material to the Supplier.

13.20 In the event that the Buyer becomes aware that the information disclosure was incomplete or inaccurate or in the event additional such material is identified then the Buyer shall provide the correctly updated information, as soon as reasonably practicable. In the event that the Buyer becomes aware that a prior disclosure included information submitted to the Supplier as being incomplete or inaccurate less than 30 days prior to the delivery to the Supplier of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

13.21 Where:

13.21.1 restrictions are advised by the Buyer to the Supplier in information provided pursuant to Paragraph 13.19 or 13.20 or both; or

13.21.2 any of the information provided by the Buyer proves to be incorrect or inaccurate, the Buyer and the Supplier shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Supplier to perform its obligations under the Contract, the matter shall be handled as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Buyer may

terminate the Contract. Termination under these circumstances will be under the terms of clause 10.3 of the Core Terms.

Interim Position

13.22 Pending agreement of any amendment of the Contract as set out in Paragraph 13.17 or 13.21, provided the Supplier takes such steps as are reasonable to mitigate the impact the Supplier shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

14. ACCOUNTING FOR THE PROPERTY OF THE BUYER

14.1 The Supplier will:

- 14.1.1 maintain a Public Store Account ("PSA"), which will include a complete list of all property of the Buyer, as defined in Paragraph 14.3 (this reference doesn't work – cannot find a suitable place in the CO Schedule to reference out to), and record for that property all transactions or other accounting information specified in the Specification;
- 14.1.2 supply to the Buyer quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof will be a reconciled report. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Supplier and receipt by the Buyer of these reports will not prejudice any rights or obligations of the Buyer or the Supplier under the Contract;
- 14.1.3 ensure that the PSA is available for inspection by the Buyer at any reasonable time;
- 14.1.4 on being given eight weeks' notice or any other period as has been stated in the Contract permit, and co-operate with, the Buyer to conduct audits of the PSA in a manner to be determined by the Buyer; where the Buyer has reasonable grounds to doubt the integrity of the PSA to the extent that the Buyer is not satisfied of the proper use of property of the Buyer, an audit may be conducted without notice;
- 14.1.5 retain the PSA for a period of three years after disposal of the last item of the property of the Buyer, or for any other period as may be specified in the Contract;
- 14.1.6 if the Buyer agrees that a Subcontractor at whatever level of sub-contracting will have responsibility in the Subcontractor's PSA for property of the Buyer issued in aid of the Contract, the Supplier will include in any Sub-Contract with those Subcontractors only the provisions corresponding to those set out in this Paragraph that apply to property of the Buyer issued in aid of the Sub-Contract, in particular clauses 14.1, 14.2 and 14.4; and
- 14.1.7 manage the GFA component of the PSA in accordance with the provisions of DEFSTAN 05-99; and implement any new edition of or amendment to DEFSTAN 05-99 within twelve weeks of the publication date of the new edition. These amendments will not have retrospective effect.

- 14.2 For the purposes of this Paragraph 'property of the Buyer' means GFA and fixed assets, including property issued under Paragraph 14 and property of the Buyer issued to the Supplier under any other authorising document except for property vested in the Buyer.
- 14.3 For the avoidance of doubt, it is a condition of this Contract that this Paragraph will apply to all property issued to the Supplier from the date of this Contract. Property of the Buyer issued prior to the date of this Contract may be subject to separate contractual arrangements.
- 14.4 The obligations of the Supplier arising under this Paragraph in respect of property of the Buyer issued in aid of the Contract will survive completion of the Contract and will not be completed until all such obligations are fulfilled including the provisions of Paragraph 14.1.5.
- 14.5 NOT USED
- 14.6 If, after completion of the Contract, no subsequent contract is placed containing Paragraph 14 within the period detailed at Paragraph 14.1.5, then the obligations of the Supplier arising under this Paragraph in respect of property of the Buyer unconnected with the Contract will cease on expiry of the period detailed at Paragraph 14.1.5.

15. ENDING THE CONTRACT

Clause 10 of the Core Terms shall be amended and supplemented by the wording in this paragraph below.

- 15.1 A new clause 10.3.3 shall be added as follows:
- 10.3.3 Upon termination by the Buyer pursuant to this Clause 10.3, Paragraph 13 of Call-Off Schedule 5 (Pricing) applies.
- 15.2 A new clause 10.4.7 shall be added as follows:
- 10.4.7 If the Buyer terminates a Contract for any of the reasons set out in Clause 10.4.1, Clause 10.5.1 to 10.5.7 shall apply.
- 15.3 A new clause 10.4.8 shall be added as follows:
- 10.4.8 Upon termination by the Buyer pursuant to this Clause 10.4, Paragraph 14 of Call-Off Schedule 5 (Pricing) and paragraph 7.1.4 of Call-Off Schedule 14 apply.
- 15.4 Clause 10.5.1 to 10.5.5 is disapplied and replaced with the following:
- 10.5 What happens if the contract ends
- Where the Relevant Authority terminates a Contract under Clause 10.4.1 all of the following apply notwithstanding that the validity of the termination may be disputed by the Supplier:
- 10.5.1 Where the Buyer exercises of any its step-in rights under Paragraph 7 of Call-Off Schedule 14, Paragraph 7.1.4 of Call-off Schedule 14 (Performance Management) shall apply.

10.5.2 No further sum shall become due to the Supplier otherwise than in accordance with this Clause 10 and the Buyer need not pay any sum that has already become due either:

- insofar as the Buyer (or the Buyer Authorised Representative on its behalf) has given or gives a Pay Less Notice; or
- if the Supplier (after the last date upon which a Pay Less Notice could have been given in respect of that sum) is the subject of a Supplier Insolvency Event.

10.5.3 Accumulated rights or remedies of the Parties arising prior to termination are not affected.

10.5.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.

10.5.5 The Supplier must promptly return any of CCS or the Buyer's property provided under the terminated Contract.

15.5 Clause 10.6 of the Core Terms shall be disapplied and replaced with the following:

10.6 When the supplier can end the contract

10.6.1 If the Buyer does not pay by 30 days after the final date for payment an undisputed amount due to the Supplier in accordance with Call-off Schedule 5 (Pricing) and/or any VAT properly chargeable on that amount and the amount due to the Supplier excluding VAT is in excess of 10% of the Estimated Yearly Charge, the Supplier shall be entitled to give to the Buyer a notice (a "Reminder Notice") specifying the default or defaults ("a specified default or defaults"). If a specified default continues for 30 days from receipt of the Reminder Notice, the Supplier may terminate the relevant Call-Off Contract by issuing a Termination Notice to the Buyer. Termination shall take effect from the date stated in the Termination Notice.

10.6.2 If a Supplier terminates a Call-Off Contract under Clause 10.6.1:

- Paragraph 15 of Call-of Schedule 5 (Pricing) applies.
- Clauses 10.5.2 to 10.5.7 apply

15.6 A new Clause 10.8.7 shall be added as follows:

10.8.7 If the Buyer does not pay by the Supplier any sum payable in accordance with Call-Off Schedule 5 (Pricing), then the Supplier shall be entitled (without prejudice to any other right or remedy), subject to the provisions of this Clause 10.8.7, to suspend performance of any or all of its obligations under the Contract:

- The Supplier shall not be entitled to suspend performance pursuant to the first paragraph of this Clause 10.8.7 unless it has given to the Buyer Authorised Representative at least 28 days' notice of its intention to suspend performance stating the ground or grounds on which it is intended to suspend performance.
- The Supplier's right to suspend performance of any or all of its obligations under the Contract shall cease immediately on payment in full of the amount

due under the provisions of the Contract, and upon such payment the Supplier shall resume performance of its suspended obligations under the Contract forthwith.

- If the Supplier suffers delay and/or incurs Costs as a result of suspending performance of its obligations under the Contract in accordance with this Clause 10.8.7, then Paragraph 15 of Call-off Schedule 5 (Pricing) shall apply.

16. REFERENCES TO LEGISLATION

Clause 12 of the Core Terms shall be supplemented by the wording in this paragraph below.

16.1 A new clause 12.4 shall be added as follows:

12.4 For the avoidance of doubt, where Law applicable to England and Wales only is expressly mentioned in this Call-Off Contract and the location of the Site and/or the provision of the Deliverables is outside England and Wales, such references shall be deemed to be substituted by references to the equivalent legislation applicable in the location of the Site and the provision of the Deliverables.