



Ministry of Defence

Def Comrcl JFC 3 Team

Contract No: CB/JFC3/005

For:

Provision of Guarding Services for Pathfinder Building at RAF Wyton

<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>Mrs Cali Bowers Joint Force Command Room A104, A Block RAF Wyton Huntingdon Cambs PE28 2EA</p> <p>E-mail Address: DefComrclCC-JFC3d@mod.uk Telephone Number: 01480 452451 ext 7344</p>	<p>And</p> <p>Contractor Name and address: Corps of Commissionaires Management Ltd T/A Corps Security Market House 85 Cowcross Street London EC1M 6PF</p> <p>E-mail Address: gbroad@corpssecurity.co.uk Telephone Number: 020 7566 0500 Facsimile Number: N/A</p>
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A	GENERAL CONTRACT PROVISIONS	5
A1.	Interpretation	5
A2.	Amendments to Contract	5
A3.	Variations to Specification	5
A4.	Precedence	6
A5.	Severability	6
A6.	Assignment of Contract	6
A7.	Waiver	6
A8.	Third Party Rights	6
A9.	Governing Law	6
A10.	Entire Agreement	7
A11.	Disclosure of Information	7
A12.	Publicity and Communications with the Media	9
A13.	Protection of Personal Data	9
A14.	Transparency	9
A15.	Equality	9
A16.	Child Labour and Employment Law	10
A17.	Subcontracting	10
A18.	Change of Control of Contractor	10
A19.	Termination for Insolvency or Corrupt Gifts	11
A20.	Consequences of Termination	14
A21.	Dispute Resolution	14
A22.	Termination for Convenience	14
A23.	Contractor's Records	14
A24.	Duration of Contract	14
A25.	Contractor's Warranties	14
B	THE CONTRACTOR DELIVERABLES	15
B1.	Supply of Contractor Deliverables and Quality Assurance	15
B2.	Environmental Requirements	15
B3.	Disruption	15
C	PRICE	16
C1.	Contract Price	16
D	INTELLECTUAL PROPERTY	16
D1.	Third Party Intellectual Property – Rights and Restrictions	16
E	FACILITIES AND ASSETS	18
E1.	Access to Contractor's Premises	18
F	DELIVERY	18
F1.	Authority's Remedies for Breach of Contract	18
G	PAYMENT AND RECEIPTS	19
G1.	Payment	19
G2.	Value Added Tax	20
G3.	Debt Factoring	21
H	CONTRACT ADMINISTRATION	21
H1.	Progress Monitoring, Meetings and Reports	21
H2.	Authority Representatives	21
H3.	Notices	22
J.	THE PROJECT SPECIFIC DEFCONS AND DEFCON SC VARIANTS THAT APPLY TO THIS CONTRACT ARE:	22
K.	THE SPECIAL CONDITIONS THAT APPLY TO THIS CONTRACT ARE:	22
K1.	PRICE	22
K2.	KEY PERFORMANCE INDICATOR'S	23
K3.	CONDITIONS & CONTRACT PERIOD	24
K4.	DISPUTED AMOUNTS	24
K5.	LIABILITY	25
K6.	INSURANCES	25
K7.	AUTHORITY DISCLOSED DATA	25
K8.	REPRESENTATIVES	26
K9.	VARIATION OF REQUIREMENT	27
K10.	MONITORING & LIASON MEETINGS	27
K11.	INDUSTRIAL ACTION	28
K12.	BUSINESS OR TRADING ACTIVITY	28
K13.	ALLOTMENT, USE & MAINTENANCE OF BUILDINGS, EQUIPMENT & FACILITIES	28
K14.	FUEL ECONOMY	28
K15.	BOARDS OF INQUIRY	28

K16. PRIVACY	28
K17. CONTRACTOR'S PERSONNEL	28
K18. MEDICAL CRITERIA	29
K19. CONTRACTOR'S REPRESENTATIVE - REMOVAL	29
K20. TENSION, HOSTILITIES AND EMERGENCY	29
K21. ACCESS, PERFORMANCE & MONITORING	29
K22. DEFINITIONS	30

L. The processes that apply to this contract are:.....	32
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The Schedules that apply to this Contract are:

Schedule 1	Definitions of Contract
Schedule 2	Schedule of Requirements Annex A to Schedule 2
Schedule 3	Contract Data Sheet Annex A to Schedule 3
Schedule 4	Contract Change Process Procedure (i.a.w. clause A2.b)
Schedule 5	Specification
Schedule 6	Contractor's Commercially Sensitive Information Form
Schedule 7	Key Performance Indicators
Schedule 8	Transfer Regulations

A General Contract Provisions

A1. Interpretation

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- 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 (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 condition A2 (Amendments to Contract). Each amendment under condition 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, Schedule 8 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause 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 condition 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 condition 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 6 (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 condition 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 condition 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 condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition 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 Condition 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 SC3 Schedule "Export Licence". Where it is not practicable to include the terms set out in SC3 Schedule "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. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

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

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

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 condition 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.

- b. 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.

- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned 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 condition 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 5 the 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 condition A18, or fails to supply or withholds the Information required under clause A18.a;
- (5) commits a persistent failure by failing to meet either:
 - (a) a single Key Performance Indicator (KPI) on Not Applicable or more occasions in a rolling Not Applicable month period; or
 - (b) Specific KPI's detailed in Schedule 7 highlighted in red stating "Escalation to Contracts" or more KPIs on a rolling three month period,
 where this Contract includes Core+ condition "Key Performance Indicators and Performance Management"; or
- (6) otherwise commits a material breach of its obligations under the Contract,

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 condition 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 condition F1 are in addition to its rights and remedies implied by statute and common law.

G Payment And Receipts

G1. Payment

a. Schedule 3 (Contract Data Sheet) specifies whether payment is to be enabled by P2P, by MOD Form 640, or by AG173. Payment may only be made using P2P where the Contractor has agreed a DEFFORM 30 with the Authority prior to the Effective Date of Contract and the DEFFORM 30 agreement is referenced in Schedule 3 (Contract Data Sheet).

b. Payment will be made by electronic transfer and prior to submitting any claims for

payment under clause G1.e the Contractor shall provide to DBS Finance the name and address of the bank, the sort code and account number to which payment should be made and, if requested by DBS Finance, any further Information where payment is to be made outside of the UK.

c. In order to obtain approval for payment, the Contractor shall, upon completion of the Contract (or any part of the Contract for which the Contractor is entitled to payment):

(1) where payment is to be made using P2P, submit a properly completed DEFFORM 129J, in accordance with the instructions shown therein and in the explanatory notes;

(2) where payment is to be made using a MOD Form 640, submit the appropriate coloured copy of the MOD Form 640 to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet) and complete and dispatch the other appropriate coloured copies of the MOD Form 640 in accordance with the instructions shown therein; or

(3) where payment is to be made using an AG173, submit a properly completed AG173 (or AG210, as appropriate) to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet).

d. Upon receipt of the AG173 (or AG210, as appropriate), the Authority shall:

(1) approve payment by entering the relevant details into P2P to indicate receipt of the applicable Contractor Deliverables, or completing and signing the AG173/AG210, and returning it to the Contractor; or

(2) notify the Contractor in writing, giving reasons why it considers approval of payment may be withheld.

e. The Contractor shall submit a claim for payment to DBS Finance by either:

(1) using a properly prepared message structure and format for invoice payment using P2P in accordance with the arrangements set out, or referenced in DEFFORM 30; or

(2) forwarding the completed AG173 / AG210 signed by the Authority, together with a properly completed DAB Form 10.

f. The Authority shall pay all valid, properly completed claims for payment submitted by the Contractor to DBS Finance in accordance with clause G1.e on or before the day which is thirty (30) days after the later of:

(1) the day upon which a valid request for approval of payment is received by the Authority in accordance with clause G1.c; and

(2) the date of completion of the part of the Contract to which the request for approval of payment relates.

g. Where using the AG173 (or AG210), the period of thirty (30) days referred to in clause G1.f shall be exclusive of the number of days that elapse between the date the Contractor receives a MOD Form 640 or AG173 (or AG210) from the Authority showing payment approval in accordance with clause G1.d and the date DBS Finance receives a valid, properly completed claim for payment in accordance with clause G1.e.

h. The approval of payment by the Authority under clause G1.d shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under condition F1 or otherwise.

i. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any Government Department.

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 condition 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 condition 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 condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

H Contract Administration

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 condition 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 condition 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 Edn 12/06 Contractor's Personnel at Government Establishments
Defcon 532B Edn 06/10 Protection of Personal Data
Defcon 611 Edn 02/16 Issued Property
Defcon 625 Edn 10/98 Co-operation of Expiry of Contract
Defcon 659A Edn 11/14 Security Measures

K. The special conditions that apply to this Contract are:

K1. PRICE

- 1.1 The Price shall be the total price for the Services including the cost of all labour, materials, equipment, overheads, travel and subsistence, related TUPE costs and all other costs of the Contractor in connection with the Contract for full and proper performance by the Contractor.
- 1.2 The hourly rate takes account of any enhancement to guard's pay for any reason whatsoever

eg. Bank holiday working. The Authority will only pay the quoted hourly rate for all hours worked regardless of the rate paid to the guard.

- 1.3 The applicable hourly incentive payment detailed at special condition K2.4 will be paid in addition to the standard hourly rate.
- 1.4 Should a change in Government Legislation relating to Pension Reform or Employer's National Insurance contributions occur, the Contractor is entitled to revisit his prices. Any price amendments will be by mutual agreement and must be requested in the first instance by the Contractor. The request must cover full explanation and evidence of the Legislation change, including how the Contractor is directly impacted by the change and a full breakdown of the cost difference. Any change to the price must not exceed the actual cost imposed by the change.
- 1.5 Prices cannot be amended for any other reason whatsoever, except in accordance with 1.4 above.

K2. KEY PERFORMANCE INDICATORS (KPIs)

- 2.1 Key Performance Indicators (KPIs) enable the Authority to accurately measure performance in key service delivery areas against clear pre-defined targets, highlighting areas of both weak performance where an improvement is necessary, and also areas of strong performance. In addition, KPIs are considered to be of benefit to the Contractor, who should be able to regularly self-assess his performance against the pre-defined targets and, where there are signs of underachievement, take early steps to improve the appropriate aspects of service delivery. The degree of underachievement against KPIs will enable the Authority to calculate what, if any, proportion of payment should be withheld.
- 2.2 The KPIs are those listed in Schedule 7 and are numbered against the deliverables detailed in the Statement of Requirement Schedule 5.
- 2.3 An incentive payment will be attached to the following KPIs –
 - 1.4 Contracted hours fully covered
 - 1.11 Duty staff suitably security cleared
- 2.4 The following scaling system will be applied depending on the level of performance against the KPIs detailed at K2.3 above –

All shifts within contract month manned correctly – 100% of incentive payment paid

1 shift within contract month not manned correctly – 80% of incentive payment paid

2 shifts within contract month not manned correctly – 60% of incentive payment paid

3 shifts within contract month not manned correctly – 40% of incentive payment paid

4 shifts within contract month not manned correctly – 20% of incentive payment paid

5 or more shifts within contract month not manned correctly – 0% of incentive payment paid
- 2.5 The incentive payments are listed within Schedule 2 the Schedule of Requirements.
- 2.6 A contract month means the first day of the calendar month to the last day of the calendar month inclusive.
- 2.7 Any shifts not manned correctly within a contract month will affect the incentive payment applied to ALL hours worked within that contract month.
- 2.8 General Principals of Key Performance Indicator Incentivisation System
 - a. It is intended that the standard hourly rate listed within the Contract will equal 90% of your price. Therefore the Firm prices detailed Schedule 2 the Schedule of Requirements are equivalent to 90%. The hourly rate quoted will be paid for every hour worked by a Security Officer or Contract Manager. Prices should be per officer, per hour.
 - b. If the following Key Performance Indicators (KPIs) are both met, then the remaining 10% will be paid as an incentivisation payment. Should either KPI not be met, the following scaling system will be used –

1 shift not manned correctly	80% of incentive payment paid
2 shifts not manned correctly	60% of incentive payment paid
3 shifts not manned correctly	40% of incentive payment paid
4 shifts not manned correctly	20% of incentive payment paid

5 or more shifts not manned correctly 0% of incentive payment paid

- c. Should an officer therefore not be available for a full shift and a suitably cleared replacement cannot be found, you will not be entitled to claim for the hours not covered and all other hours for the payment period will be paid at the standard rate plus 8% of the incentivisation payment.

K.3 CONDITIONS AND CONTRACT PERIOD

- 3.1 Further to Clause A.24 the Authority may at its sole discretion extend the term of this Contract by a further period of 1 (one) Year subject to clauses K3.2 and K3.3. The Authority shall give written notice to the Contractor if it wishes to do so no less than 30 (thirty) days before the Expiry Date. The provisions of this Contract will continue to apply throughout any extended period.
- 3.2 The Authority may only exercise its right under clause K3.1 once; and
- 3.3 The Firm and Max Prices in Schedule 2 shall apply accordingly to any such extended period.

K.4 DISPUTED AMOUNTS

- 4.1 The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract (“**Disputed Amount**”) pending agreement or determination of the Contractor’s entitlement in relation to the Disputed Amount, subject to notifying the Contractor of such belief (and the reasons for it) on or before the day on which the Disputed Amount would (but for this clause K4.1) otherwise fall due.
- 4.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- 4.3 Within 5 (five) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to clause K4.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:
- 4.3.1 to retain in a permanent basis any amounts withheld pursuant to clause K4.1; and
 - 4.3.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, together with any interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.
- 4.4 If the Contractor responds pursuant to clause K4.3 that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause K4.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under DEFCON 530 (*Dispute Resolution (English Law)*).
- 4.5 If the determination of any Dispute conducted pursuant to clause K4.4 shows that:
- 4.5.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or
 - 4.5.2 the Contractor has claimed under DEFCON 522 (*Payment*) in accordance with clause K4 (*Payment Process in addition to DEFCON 522*) any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

K.5. LIABILITY

- 5.1 Without prejudice to any further or other rights or remedies of the Authority, the Contractor shall indemnify the Authority against:
- 5.1.1 all loss or damage of MOD property in any way connected with the execution or purported execution of the Contract;
 - 5.1.2 all damage occurring to any Government property, which includes land or buildings, occasioned by the Contractor or by his servants, agents, suppliers or Subcontractors, arising from his or their presence on Government premises in connection with the Contract; provided that the Contractor shall not be under any such liability if he is able to show that such injury, illness, disease, loss or damage was neither caused nor contributed to by the negligent act, omission or default of the Contractor or his servants, agents or any Subcontractor or by any circumstances within his control.

K.6. INSURANCES

- 6.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 6.2 The Contractor shall hold Employer's Liability Insurance in respect of staff in accordance with any legal requirement for the time being in force.
- 6.3 The Contractor shall produce to the Designated Officer, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 6.4 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract, the Authority may make alternative arrangements to protect his interests and may recover the costs of such arrangements from the Contractor.
- 6.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover required.
- 6.6 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.
- 6.7 Where any Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 6.8 Where any Insurance is subject to an excess or deductible below which the indemnity from Insurers is excluded the Contractor shall be liable for such excess or deductible and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

K.7 AUTHORITY DISCLOSED DATA

- 7.1 Subject to clause 7.3, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority during the course of the procurement of this Contract and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 7.1.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind

whatsoever in any data disclosed by the Authority during the course of the procurement of this Contract; or

- 7.1.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract.

No Relief

- 7.2 Subject to clause 7.3, the Contractor shall not be in any way relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient, and shall make its own enquiries as to the accuracy and adequacy of that information.

Fraudulent Statements

- 7.3 Nothing in this clause 7 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the date of this Contract.

K.8. REPRESENTATIVES

References to Authority and Contractor

- 8.1 Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:
- 8.1.1 the giving of consent;
 - 8.1.2 the delivering of any notices; or
 - 8.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,
 - 8.1.4 shall be deemed to be references to the Authority's Representative and the Contractor's Representative (respectively) in accordance with this clause 8.

Contractor's Representative

- 8.2 The Contractor shall appoint the person whose name, address and telephone number is set out in Schedule 3 (Contract data Sheet) Clause H3.a.(3) Notices as the “**Contractor's Representative**” to act as the Contractor's representative in connection with the provision of the Contract Deliverables and generally in connection with this Contract.

Authority of Contractor's Representative

- 8.3 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Unless notified in writing before such act or instruction, the Authority shall be entitled to treat any act of the Contractor's Representative which is authorised by this Contract as being expressly authorised by the Contractor and the Authority shall not be required to determine whether authority has in fact been given.
- 8.4 The Contractor shall ensure that the Contractor's Representative acts in accordance with the Contractor's Representative's powers and functions in this Contract.

Authority's Representative

- 8.5 The Authority shall appoint the persons whose names, addresses and telephone numbers are set out in Schedule 3 (Contract Data Sheet) as the “**Authority's Representatives**” to act as the Authority's representatives in connection with this Contract.

Authority of Authority's Representatives

- 8.6 The Authority's Representatives shall have full authority to act on behalf of the Authority for all purposes of this 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 are authorised by this Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- 8.7 The Authority shall ensure that the Authority's Representatives act in accordance with the Authority's Representatives' powers and functions in this Contract.
- 8.8 The Authority shall not be responsible for any Contract Deliverables supplied on the verbal or written order of any person other than the Authority's Representatives.

K.9 VARIATION OF REQUIREMENT

- 9.1 Should the introduction of new technology, changes in operating requirements, or any change in circumstances appear to call for amendments to any of the Establishment Instructions, Publications or Schedules then the Contractor shall bring this to the notice of the Designated Officer immediately.
- 9.2 The Authority may, by notice in writing, delete, amend or alter the extent of any service to be provided under the Contract, or add to the Contract any additional services. In the event of such variation of the Contract requirements payment shall be subject to such fair and reasonable adjustment as may be attributable to the variation. For the purposes of agreeing an adjustment, the rates provided by the Contractor at the time of tendering shall be the basis of the calculation.
- 9.3 If at any time during the Contract the Contractor considers that additional services are required other than those currently covered by the Contract, he shall immediately inform the Contracts Branch of the requirement and provide to the Authority an estimate of the cost for consideration. Such work shall not proceed until approval has been given in writing by Commercial Branch, JFC.
- 9.4 Nothing said, done or written by any person, nor anything omitted to be said, done or written by any person including, but without limitation, any servant or agent of the Authority shall in any way affect the rights of the Authority to modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by Commercial Branch.

K.10. MONITORING AND LIAISON MEETINGS

- 10.1 The Contractor shall be responsible for monitoring his performance of the Contract and provide the Designated Officer with full particulars of any aspects of his said performance which fail to meet the requirements of the Contract, unless otherwise notified in writing by the Authority.
- 10.2 The Contractor shall, taking into account all requirements arising from the Contract, issue appropriate operating and procedural instructions in writing to staff engaged on the Contract and provide copies to the Authority of any instructions which withdraw, notify or supplement any instructions previously in force, within 14 days of the issue of any such instructions.
- 10.3 Regular meetings between the Authority and the Contractor's Contract Manager and Area Manager shall be held not less frequently than once per month. The Authority will make the necessary arrangements for these meetings which will be held at the offices of the Designated Officer. A record of all meetings shall be made by the Contractor and shall be provided to the Authority within 5 working days. Within 7 working days of each meeting, a member of the Contractor's management is to be available to discuss and resolve any difficulties which cannot be resolved on site.
- 10.4 The Contractor shall arrange for the attendance of such members of his staff and those of his Subcontractors or his agents who may be required by the Authority to attend as witnesses at Boards of Enquiry or similar proceedings.

K.11. INDUSTRIAL ACTION

11.1 The Contractor shall, at the Authority's request, immediately replace any guard or supervisor who, in the course of providing services to the Authority, engages in or threatens to engage in, industrial action of any kind.

K.12. BUSINESS OR TRADING ACTIVITY

12.1 Except as provided in this Contract, neither the Contractor nor any of his employees or agents shall carry out any business or trading activity within the confines of the Authority's premises and no advertisement, sign or notice of description shall be exhibited without prior approval, in writing, of the Authority.

K.13. ALLOTMENT, USE & MAINTENANCE OF BUILDINGS, EQUIPMENT & FACILITIES

13.1 The Authority shall allot the accommodation and facilities detailed within Schedule 1, Statement of Requirements without charge to the Contractor for the purpose of the Contract.

13.2 The Contractor shall be entitled to use the said facilities on Ordinary Loan for the purposes of the Contract and no other purpose whatsoever, unless the prior written approval of the Authority has been obtained. The Authority reserves the right to vary numbers and types of the said facilities allotted for the purpose of the Contract.

13.3 Subject to condition 28.2, maintenance and repair of the accommodation, equipment and facilities provided by the Authority shall be carried out by the Authority with no charge to the Contractor except as otherwise laid down.

13.4 Whilst the Authority shall endeavour to ensure the continuity of the allotted property, services and facilities, any failure to do so shall not be deemed to be breach of the Contract. Under such circumstances, the Contractor shall continue to perform the Contract subject to any changes agreed with the Commercial Branch.

K.14. FUEL ECONOMY

14.1 The Contractor shall ensure that proper attention is paid at all times to economy and conservation in the use of fuels and energy, eg. heating and lighting etc and avoid waste. The Contractor shall comply with any targets for fuel and energy consumption imposed by the Authority.

K.15. BOARDS OF INQUIRY ETC

15.1 The Contractor shall facilitate the attendance as witnesses at Boards of Inquiry, etc of such of his staff as may be invited by the Authority to give evidence.

K.16. PRIVACY

16.1 It shall be the responsibility of the Contractor to ensure that the highest standards of privacy and confidentiality are maintained by his personnel in relation to documents, which bear privacy markings whether classified or not, with which they are entrusted. The same standards of privacy and confidentiality shall be applied to information acquired orally. Unauthorised divulgence of 'In Confidence' information can damage the reputation of an individual. The Contractor shall be aware that the Authority attaches great importance to the protection of the individual.

K.17. CONTRACTOR'S PERSONNEL

17.1 Ensure that no Guard or Supervisor accepted for employment is less than 18 years of age, unless they have shown previous and recent satisfactory service in the Armed Forces, or as a uniformed member of a Civilian Police Force or the MOD Guard Service (or has given satisfactory service if employed on the current task being re-tendered if applicable).

17.2 Satisfy the Authority that every person it is intended to employ on site is respectful of authority, responsible and has the ability to undertake minor clerical tasks in pursuance of his duties and that all reasonable precautions have been taken to ensure trustworthiness.

- 17.3 Ensure that the Guard Force is trained, experienced and well able for the task and responsibilities; and further to minimise the extent of knowledge of the Establishment's security procedures, the contractor shall take all reasonable steps to limit changes in staff assigned to and accepted for work on the site or sites. Where changes are unavoidable, the contractor shall give not less than one months' notice of any proposed new staff assignment.
- 17.4 Keep the Designated Officer informed of any industrial relations problems or other impending difficulties likely to affect performance of the Contract and use his best endeavours to avoid industrial disputes or stoppages involving staff employed on the Contract;
- 17.5 Be entirely liable for setting the pay and conditions of service of staff;
- 17.6 Be entirely liable for any costs and payment of redundancy awards to his staff on expiry or termination of the Contract.

K.18. MEDICAL CRITERIA

- 18.1 The Contractor will provide personnel in general good health who should demonstrate mobility by undergoing physical tests. Eyesight, hearing and sense of smell should be checked. Procedures should be in operation to ensure that the physical condition of persons is maintained during the length of contract. If there is a change in a person's duties, further physical tests should be performed by the person if appropriate. Persons employed for security duties should be aged over 18 years unless employed in accordance with condition 17.1 above. Persons over 65 years should undergo annual medical examinations to ensure fitness for duty. The Contractor will be required to confirm that in each and every case that they have established that their Guards or Supervisors are medically fit. If this is subsequently found not to be so, the Guard or Supervisor should be withdrawn by the Contractor and replaced by an approved substitute. The cost of any medical examinations required will be borne by the Contractor.

K.19. CONTRACTOR'S REPRESENTATIVE - REMOVAL

- 19.1 If in the opinion of the Authority, any representative or agent of the Contractor shall misconduct himself or be incapable of efficiently performing his duties, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary, in default of which the Authority may employ such other persons as he may deem necessary for the purpose of carrying out the work and recover from the Contractor the additional cost thereby incurred. The decision of the Authority shall be final and conclusive.

K.20. TENSION, HOSTILITIES AND EMERGENCY

- 20.1 In the event of tension, hostilities or emergency the Authority will advise the Contractor of any necessary alterations to the Contract and will negotiate a suitable adjustment to its terms and conditions.

K.21. ACCESS, PERFORMANCE & MONITORING

- 21.1 Day to day monitoring of the performance of the Contract will be the responsibility of the Designated Officer assisted as necessary by other representatives of the Authority. The Designated Officer and others shall be afforded every facility to carry out their duties which may include inspections to take place on a "no notice" basis. Such inspections may be undertaken in conjunction with the Contractors Inspectorate.
- 21.2 The Contractor shall, taking into account all requirements, issue appropriate operating and procedural instructions in writing to all staff and provide copies to the Designated Officer for agreement prior to the start of the Contract.
- 21.3 The Contractor shall provide adequate supervision of the guard force in consultation with the Designated Officer who will monitor the day-to-day performance of the guards and will take up with the Contractor's nominated representative any shortcomings in the performance of their tasks. The Contractors will remedy such shortcomings on being advised.

- 21.4 During silent hours duties, frequent communication between site and area control either by telephone or radio is essential. The frequency may be varied according to the importance of that which is being protected but once per hour is normal with irregular "reverse" calls being made by Control to ensure that all is well. Any missed calls from the site must be investigated immediately by the company.
- 21.5 The Contractor shall give reasonable access and facilities to representatives of the Authority to permit the observance of the performance of the Contract and shall make available for inspection as required the allotted equipment, buildings and facilities;
- 21.6 In order to discharge its responsibilities under all current legislation appropriate to the services being provided by the Contractor, the Authority reserves the right to make safety inspections within the Contractor's area of responsibility at the Unit at any time without prior notice.

K.22. DEFINITIONS

In this Contract the following words and expressions shall be deemed to have the following meanings:

'Business Day' has the same meaning as in DEFCON 501 (Edition 04/04);

'Commencement Date' means 1st July 2016;

'Contractor Default' means any one or more of the following:

- (a) a failure by the Contractor to provide the Contractor Deliverables (or a material part thereof);
- (b) the occurrence of a Persistent Breach;
- (c) the occurrence of an insolvency or bankruptcy pursuant to DEFCON 515 Bankruptcy and Insolvency);
- (d) the occurrence of a Prohibited Act as defined in DEFCON 520 (Corrupt Gifts & Payment of Commission);
- (e) a failure by the Contractor to provide the Contract Deliverables in accordance with the Schedule of Requirements;

'Contract Deliverables' means Guarding Services which the Contractor is required to provide under this Contract in accordance with the Schedule of Requirements;

'Contract Payment' means the amount payable to the Contractor by the Authority under this Contract in respect of the Contractor's provision of the Contract Deliverables;

'Contract Price' means the amount payable to the Contractor by the Authority under this Contract in respect of the Contractor's provision of the Contract Deliverables;

'European Union' means the union of member states (that are members at any given time) established by the Treaty on European Union, which took effect on 1 November 1993;

'Expiry Date' means 31st March 2020 unless extended by the Authority in accordance with Clause K3.1.

'Good Industry Practice' means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator engaged in the same type of undertaking as that of the Contractor under the same or similar circumstances;

'Government Department' means any department of the central government of the United Kingdom;

'HMRC' means HM Revenue and Customs;

'Indirect Losses' means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of revenue, loss of contract, loss of goodwill or any claim for consequential loss or for indirect loss of any nature;

'IPR' means all trade marks, trade and business names, patents, copyright (including copyright in computer programs), database rights, design rights, registered designs, utility models, semi conductor topography rights, inventions, know-how, moral rights, confidential information and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether or not registered or capable of registration, and, in respect of such rights which are capable of registration, the right to apply for registration and all applications for registration of any of the foregoing rights;

'Legislation' means in relation to the United Kingdom:

- (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,

in each case in the United Kingdom;

'Manned Guarding Services' means guarding services provided in accordance with Schedules 1 & 2.

'Ordinary Loan' means the issue of materiel, without charge, for a particular purpose and for a specified period, at the end of which the item is intended to be returned unchanged, except for fair wear and tear.

'Persistent Breach' means 3 (three) or more breaches (the "**Subsequent Breaches**") by the Contractor of one of its obligations under this Contract, provided:

- (a) that the Authority has previously served on the Contractor a notice ("**Warning Notice**") correctly stating that the Contractor has, in the 6 (six) month period prior to the service of such Warning Notice, breached such obligation under this Contract on 3 (three) or more occasions;
- (b) that the Contractor's Subsequent Breaches of such obligation take place during the 6 (six) month period following the service of such Warning Notice; and

no service of a Warning Notice may be based on any breaches of such obligation that have already been the subject of a Warning Notice;

'Prescribed Rate' means 2 (two) percent above the base rate of The Bank of England;

'Prohibited Act' has the meaning given to it by DEFCON 520 (Corrupt Gifts and Payments of Commission);

'Relevant Authority' means any court with the relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

'Subcontractor' means a subcontractor to the Contractor, a subcontractor of a subcontractor to the Contractor, and any other subcontractor of whatever tier involved in provision of the Contract Deliverables;

'Subcontract(s)' means the contract(s) entered into between the Contractor and the Subcontractors in respect of the provision of the Contract Deliverables;

'Tax' means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Contract and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

'Termination Date' means the date of any early termination of this Contract pursuant to DEFCON 656 (Break);

'United Kingdom' or 'UK' means the nation state consisting of England, Scotland, Wales and Northern Ireland;

'VAT' means value added tax and is the tax charged on supplies of goods and services in the United Kingdom pursuant to the Value Added Tax Act 1994; and

'Year' means the 12 (twelve) month period from and including the day falling immediately before the day bearing the same number in the same month of the following year (or, in the case of a period commencing on 29 February, ending on the next following February 28);

L. The processes that apply to this Contract are:

N/A

Schedule 1 - Definitions of Contract

Core Definitions

AG173	means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;
AG210	means the MOD invoice form AG210 that suppliers submit as an invoice to enable a stage or milestone payment to be processed;
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: <ul style="list-style-type: none">a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; andc. such 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: <ul style="list-style-type: none">a. Government Department;b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c. 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 condition 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;

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 Commercially Sensitive Information	means the Information listed in the completed Schedule 6 - 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;
DAB Form 10	means the MOD invoice summary form;
DBS Finance	means Defence Business Services Finance, at the address stated at Annex A to Schedule 3 (Contract Data Sheet);
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 SC3 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;
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 Clause K2 and Schedule 7 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;
MOD Form 640	means the MOD form in 5 separate parts which may be obtained from the address specified for obtaining MOD forms and documentation in Schedule 3 (Contract Data Sheet);
Notices	shall mean all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
P2P	means the MOD electronic ordering, receipting and payment system;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Schedule of Requirements	means Schedule 2 (Schedule of Requirements) and Annex A to Schedule 2, 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 5 (Specification) 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.

Appendix A to Schedule 1 – Core+ Definitions of Contract

Core+ Definitions

Articles	means the Contractor Deliverables (goods and / or the services), including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (This definition only applies to Core Plus Schedule “Hazardous Articles, Materials or Substances supplied under the Contract” and any DEFCONs if either are included in this Contract);
Collect	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause K14.c and Collected and Collection shall be construed accordingly;
Consignor	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
CPET	means the UK Government’s Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy
Denomination of Quantity (D of Q)	means the quantity or measure by which an item of material is managed;
Diversion Order	means the Authority’s written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
Employee	shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given. (This definition only applies to the narrative condition “Security Measures”);
Evidence	means either: a. an invoice or delivery note from the timber supplier or subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET;
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

Independent Verification	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to “BS EN ISO / IEC 17065: 2012 Conformity assessment - Requirements for bodies certifying products, processes and services”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;
Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement”. The edition current on the day the contract documents are issued by the Authority shall apply;
Military Level Packaging	Packaging that by the nature of the packaged items nature, or envisaged transport / movement or handling within the military supply chain and requires enhanced protection beyond that which commercial Packaging normally provides;
Military Packaging Accreditation Scheme (MPAS)	is a MOD sponsored scheme to accredit military packaging designers capable of producing SPIS designs acceptable to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS/DR14. MPAS detail is available from DESJSCSCM-EngTLS-Pkg@mod.uk ;
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging Designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation which is an intergovernmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Overseas	shall mean non UK or Foreign
Packaging	Verb. The operations involved in the preparation of materiel for: transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;
Primary Packaging Quantity (PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> a. pre-consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber; b. post-consumer reclaimed wood and wood fibre, and driftwood;

c. reclaimed timber abandoned or confiscated at least ten years previously;

it excludes sawmill co-products;

Short-Rotation Coppice

means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

STANAG 4329

means the publication NATO Standard Bar Code Symbologies which can be sourced from Information at www.dstan.mod.uk/faqs.html;

Timber and Wood-Derived Products

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

Virgin Timber

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

Schedule 2 - Schedule of Requirements for Services for Contract No: CB/JFC3/005

For: Provision of Guarding Services for Pathfinder Building at RAF Wyton

Item	Description	Firm Price per Officer per hour £	Firm Incentive Payment Price per Officer per hour £	Total Max Price Per Period £
1	The provision of a Manned Security Guarding Service in accordance with Schedules 1 & 2. Period 1 – from 1st July 2016 – 31st March 2017			
2	The provision of a Manned Security Guarding Service in accordance with Schedules 1 & 2. Period 2 – from 1st April 2017 – 31st March 2018			
3	The provision of a Manned Security Guarding Service in accordance with Schedules 1 & 2. Period 3 – from 1st April 2018 – 31st March 2019			
4	The provision of a Manned Security Guarding Service in accordance with Schedules 1 & 2. Period 4 – from 1st April 2019 – 31st March 2020			
5	The provision of a Manned Security Guarding Service in accordance with Schedules 1 & 2. Option Year 1 – from 1st April 2020 – 31st March 2021			

Annex A to Schedule 2 (Schedule of Requirements for Associated Goods) for Contract No: CB/JFC3/005

For: Provision of Guarding Services for Pathfinder Building at RAF Wyton

<u>Contractor Deliverables</u>									
Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code (full address is detailed in DEFFORM 96)	Packaging Requirements inc. PPQ and DofQ (as detailed in DEFFORM 96)	Delivery Date	Total Qty	Firm Price (£) Ex VAT	
								Per Item	Total inc. packaging (and Delivery if specified in Schedule 3 (Contract Data Sheet))
N/A									
N/A									
N/A									
N/A									
Total Firm Price									

Item Number	Consignee Address (XY code only)
N/A	

Schedule 3 - Contract Data Sheet for Contract No: CB/JFC3/005

<p>Condition 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.d shall apply</p> <p>Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause A9.g (if applicable) are as follows:</p>
<p>Condition A22 Termination for Convenience</p>	<p>The Notice period for terminating the Contract shall be 30 Business Days.</p>
<p>Condition A24 Contract Period</p>	<p>The Contract expiry date shall be: 31 March 2020, unless the option has been taken up to extend the Contract by one year, see clause K3.</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 type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within N/A Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.</p> <p>Other Quality Assurance Requirements:</p> <p>N/A</p>
<p>Condition C1 Contract Price (Excl. Vat)</p>	<p>All Schedule 2 line items have Firm Pricing and Max Pricing:</p> <p>See also clauses K 1 & K2 refers</p>
<p>Clause G1.a Payment</p>	<p>DEFFORM 30 Agreement refers (if applicable)</p> <p>Reference:</p> <p>Date:</p>

<p>Clause G1.c.(2) and G1.c.(3) Payment (for Schedule 2 items)</p>	<p>Payment is to be enabled by:</p> <p>Line Items 1-5 P2P Refers</p> <p>Line Items N/A MOD Form 640 refers</p> <p>Line Items N/A AG173 refers</p> <p>(Address to which MOD Form 640 or AG173/AG210 (approval for payment) should be sent if different from Consignee):</p>
<p>Clause H1.a Progress Monitoring</p>	<p>The Contractor shall be required to attend the following meetings (see clause 1.14 on Schedule 5):</p> <p>Type: Progress Meeting</p> <p>Frequency: Weekly (Supervisor level)</p> <p>Location: RAF Wyton</p> <p>Type: Progress Meeting</p> <p>Frequency: Monthly (Suitably qualified or experienced Contract Manager)</p> <p>Location: RAF Wyton</p>
<p>Clause H1.b Progress Reports</p>	<p>The Contractor is required to submit the following Reports:</p> <p>Type: As detailed in Schedule 5, the Statement of Requirement</p> <p>Frequency: As and when required</p> <p>Method of Delivery: N/A</p> <p>Delivery Address: N/A</p>
<p>Clause H2.b Authority's Representatives</p>	<p>The Authority's Representatives for the Contract are as follows:</p> <p>Commercial: Mrs Cali Bowers</p> <p>Project Manager: Mr Jonathan Smith</p> <p>Payment: Mr Jim Oram</p>
<p>Clause H3.a.(3) Notices</p>	<p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: JFC, Room A104, A Block, RAF Wyton, Huntingdon, Cambs PE28 2EA</p> <p>Contractor:</p> <p>Name: Mr G Broad</p> <p>Address: Corps Security, Market House, 85 Cowcross St, London, EC1M 6PF</p> <p>Telephone: 020 7566 0500</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 type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Line Items:</p> <p>If Yes, does the Contractor Deliverables require Traceability throughout the supply chain?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Line Items:</p>
<p>Condition K2 Marking of Contractor Deliverables (Core+ Only)</p>	<p>Special Marking requirements: N/A</p>
<p>Condition K3 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances (Core+ Only)</p>	<p>A completed SC3 Core Plus Schedule “Hazardous Articles, Materials or Substance Statement”, and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>a) The Authority’s Representative (Commercial)</p> <p>b) DSA-Land-MovTpt-DGHSIS@mod.uk</p> <p>or if only a hardcopy is available to:</p> <p>a) The Authority’s Representative (Commercial)</p> <p>b) Hazardous Stores Information System (HSIS) Defence Safety Authority (DSA) Movement Transport Safety Regulator (MTSR) Hazel Building Level 1, #H019 MOD Abbey Wood (North) Bristol, BS34 8QW</p> <p>DSA-DLSR-MovTpt-DG HSIS (MULTIUSER)</p> <p>to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date:</p>
<p>Clause K4.i Timber and Wood-Derived Products (Core+ Only)</p>	<p>A completed SC3 Core Plus Schedule “Timber and Wood-Derived Products Supplied under the Contract: Data Requirements”, is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>The Authority’s Representative (Commercial)</p> <p>or, if only a hardcopy is available to:</p> <p>The Authority’s Representative (Commercial)</p> <p>to be Delivered by the following date: N/A</p>

<p>Clause K5.b Rejection (Core+ Only)</p> <p>(Note: If no period is inserted here the time period shall be 20 Business days)</p>	<p>Time limit for rejection of the Contractor Deliverables shall be 20 Business Days.</p>
<p>Clause K6.a Delivery (for Schedule 2, Appendix A items) (Core+ Only)</p>	<p>The transport requirements shown below are applicable:</p> <p>Line Items N/A</p> <p>To be Delivered by the Contractor (See box “Delivery by the Contractor” below)</p> <p>Line Items N/A</p> <p>To be Collected by the Authority (See box “Collection by the Authority” below)</p>
<p>Clause K6.b Delivery by the Contractor (for Schedule 2, Appendix A items) (Core+ Only)</p>	<p>(Where applicable, see box “Delivery” above.)</p> <p>Special Delivery Instructions: N/A</p> <p>Each consignment of the Contractor Deliverables to be accompanied by:</p> <p>Line Items MOD Form 640</p> <p>Line Items DEFFORM 129J</p> <p>Line Items Delivery Note</p>
<p>Clause K6.c Collection by the Authority (for Schedule 2, Appendix A items) (Core+ Only)</p>	<p>(Where applicable, see Box “Delivery” above)</p> <p>Special Collection Instructions:</p> <p>Each consignment of the Contractor Deliverables to be accompanied by:</p> <p>Line Items: MOD Form 640</p> <p>Line Items: DEFFORM 129J</p> <p>Line Items: Delivery Note</p> <p>Consignor Address:</p> <p>Line Items: Address:</p> <p>Line Items: Address:</p> <p>Consignee Address Details:</p> <p>Line Items: Address Details:</p>

	Line Items: Address Details: Line Items: Address Details:
Condition K7 Self to Self Delivery (Core+ Only)	Is Self to Self Delivery required: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, Delivery address applicable:
Clause K16.a Limitation of Contractor's Liability	The Contractor's liability under, or in relation to, the contract shall be limited in respect of the following risks as set out below: NOT APPLICABLE
Other Addresses and Other Information (Covers forms and publications addresses and official use information)	See Annex A to Schedule 3 (DEFFORM 111)

Appendix - Addresses and Other Information

1. Commercial Officer

Name: Mrs Cali Bowers
Address:
JFC, Rm A104, A Block,
RAF Wyton,
Huntingdon,
Cambs,
PE28 2EA
Email: DefcomrclCC-JFC3d@mod.uk
Tel 01480 452451 ext 7344

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

Name: Mr Jonathan Smith
Address:
Pathfinder Building,
RAF Wyton,
Huntingdon,
Cambs
PE28 2EA
Email: JFIG-PathfinderJSyA@mod.uk
Tel 01480 452451 ext 5403

3. Packaging Design Authority

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

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

N/A

Tel No:

(b) U.I.N.

5. Drawings/Specifications are available from

N/A

6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to

N/A

(where no address is shown the mauve copy should be destroyed)

7. Quality Assurance Representative:

N/A

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

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

9. Consignment Instructions

The items are to be consigned as follows:
N/A

10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH
Air Freight Centre
IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943
EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943
Surface Freight Centre
IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946
EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)
JSCS Fax No. 01869 256837
www.freightcollection.com

11. The Invoice Paying Authority (see Note 1)

Ministry of Defence ☎ 0151-242-2000
DBS Finance
Walker House, Exchange Flags Fax: 0151-242-2809
Liverpool, L2 3YL
Website is:
<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management
PO Box 2, Building C16, C Site
Lower Arncott
Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)
Applications via fax or email: DESLCCLS-OpsFormsandPubs@mod.uk

NOTES

1. Forms. Hard copies, including MOD Form 640 are available from address in Box 12., All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.

2.* 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:
CB/JFC3/005**

1. Authority Changes

- a. Subject always to condition 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 condition 3 below.

3. Contractor Change Proposal

- a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.
- b. The Contractor Change Proposal shall include:
 - (1) the effect of the Change on the Contractor's obligations under the Contract;
 - (2) a detailed breakdown of any costs which result from the Change;
 - (3) the programme for implementing the Change;
 - (4) any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
 - (5) such other information as the Authority may reasonably require.
- c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

4. Contractor Change Proposal – Process and Implementation

- a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
 - (1) evaluate the Contractor Change Proposal;
 - (2) where necessary, discuss with the Contractor any issues arising and, following such discussions, the Authority may modify the Authority Notice of Change and the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
- b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
 - (1) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with condition 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 condition 4 shall apply.

Schedule 5 - Specification for Contract No: CB/JFC3/005



**THE PROVISION OF A MANNED SECURITY GUARDING SERVICE AT
PATHFINDER BUILDING, RAF WYTON**

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
<p>1.1 The guard force on duty is wholly responsible to the requirements of the Designated Officer in execution of their agreed tasks.</p>	<p>The command chain for the guard force is: Head of Establishment. Establishment Security Officer Head of Security Task Group (Designated Officer) DO authorised representative Service providers Contract Manager Service providers Supervisor grade</p>	<p>Information item on Governance which must be adhered to.</p> <p>The Designated Officer is also referred to as the Authority within this document.</p>
<p>1.2 Service provider shall be compliant with, registered or accredited as applicable.</p> <p>1.3 Service provider to maintain 1.2 throughout the contract period.</p>	<p>a) The Security Industry Authority (SIA) Approved Contractor Scheme. b) ISO 9001:2000 Quality Management and Quality Assurance Standards. c) BS 7499:2007 Code of Practice for Static Guarding, mobile patrols and key-holding services.</p>	<p>These requirements are measurable within the KPI process.</p>
<p>1.4 Service provider will be compliant with the Working Time Regulations 1998.</p>	<p>a) Average 48-hour week over a nominal 17 week period. b) EU WTD allows in certain circumstances, the 17 week period to be extended to 52. c) Shifts not to exceed 12 hours. d) Maximum 56-hours in 7 consecutive days, must be given 48-hours consecutive time off. e) Service provider to liaise with the DO for his approval in exceptional circumstances if this cannot be met. f) Service provider to factor in concentration times and regular breaks for staff engaged in CCTV monitoring and demonstrate how this is being achieved. g) Breaks (including reading materials) are to be taken away from the workstation (no food is to be consumed within Security Posts, drinks are to be kept in a sealable container no less than 300mm away from console equipment) h) All commitments are to be adequately covered.</p>	<p>These parameters are measurable within the KPI process.</p>

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
<p>1.5 Service provider is to provide an adequate pool of employees who are security cleared to the required standards to ensure that the guarding requirements are met at all times.</p>	<ul style="list-style-type: none"> a) Previously nominated and approved reserves to be on 2 hours notice to be on duty. b) A minimum baseline manning ratio of 4 guards for each 24-hour post. c) The ratio of nominated reserves shall be 1 for every 6 persons employed for guarding tasks in this contract. d) Continuity of cover must be provided for rest periods, tea & meal breaks taken by guards or supervisors. e) Approved reserves may be employed elsewhere within the service providers company, however, priority must be to the commitment of this contract if invoked by the Designated Officer (DO) f) The requirements of 1.4 shall apply to approved reserves utilized on this contract even when not on this site. g) Approved reserves may be called upon to cover short notice sickness or absence. h) Approved reservists can also be called upon with 5 working days notice, to provide cover for training as and when required by the DO. 	<p>These requirements and parameters are measurable within the KPI process.</p> <p>Approved reserves are permitted to work on other sites; however, compliance with 1.4 will give a level of assurance that they are not fatigued prior to duty.</p>
<p>1.6 Service provider to ensure all guard force personnel have been approved by the Designated Officer (DO) prior to the security clearance process.</p>	<p>Prospective guards are to complete and return a Nationality Declaration Form (NDF) prior to the DO decision process.</p>	
<p>1.7 Service provider to confirm in writing to the DO, either annually or on change of staff, that the guard or supervisor is medically fit for employment.</p>	<ul style="list-style-type: none"> a) If subsequently the guard or supervisor is found not to meet 1.6 or 1.7, they should be withdrawn and replaced with an approved substitute in the time specified in 1.5 a). b) Any medication which may have an adverse effect on the guards ability to perform their duty, must be brought to the attention of the DO, the guard will be prohibited from being assigned to post. c) Guards must not be colour-blind. 	<p>These requirements and parameters are measurable within the KPI process.</p> <p>X Ray scanners and other equipment present valuable graphical information for interpretation by colour variances.</p>

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>	
1.8 Staff Leaving	The service provider must inform the DO or his representative at the earliest opportunity that a staff member is leaving or has left, not to return under this contract. Staff must be de-inducted by the DO or authorised representative on site, travel outside of site to de-induct an individual, shall be at the cost of the service provider	Staff turnover is a measurable on the KPI.	
1.9	Redacted		

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
	Redacted	

<u>1. Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
	Redacted	

<u>1. Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>	
	Redacted		
	Redacted		

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
<p>1.10 Service provider to accommodate reasonable requests.</p>	<p>p) In an emergency or elevated Response Levels, the Designated Officer will have the right to order the service providers staff to perform such reasonable tasks as may be necessary for the security of the site.</p>	
<p>1.11 Service provider to supply suitable cleared personnel for the duration of the contract.</p>	<ul style="list-style-type: none"> a) Security Clearance (SC) is the minimum acceptable for a limited duration b) No more than one SC cleared guards can be on duty at any one time at each site unless authorised by the DO. c) If the DO authorises admittance, they can be escorted within the building by a fully cleared person. d) SC cleared guards may be left unattended outside the building within the fence line or within the GAO only, externally all areas are permissible. (ATIC excluded). e) Full clearance is required for unescorted access within the SAO, Security Control Centre, Main Security Post and the Secondary Security Post. f) The limited duration period alluded to in a) above is 100 working days from the date that the SC was granted. g) Sensitive Information Defensive Briefs will be given to all SC cleared staff by the authority. h) A fully cleared person will hold Developed Vetting (DV), completed a Nationality Declaration Form to the satisfaction of the Corporate STRAPSO, signed the Official Secrets Act, be 'indoctrinated' , read, understood and signed establishment orders (if applicable), security orders, escort orders, and attended fire awareness including Health & Safety and full attendance at mandated annual briefs. i) Individuals, who fail the DV process or subsequently loose their DV status, will be deemed unsuitable to remain on site. j) Any changes of individual's circumstances which might have an effect on clearance must be brought to the attention of the DO. 	<p>These requirements and parameters are measurable within the KPI process.</p> <p>The authority will sponsor DV applications in the absence of the service provider being unable to provide this function, it must be noted that the authority will advise that the DV be cancelled should the individual no longer be used to cover this contract commitment.</p>

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
1.12 Service Provider to ensure minimal costs to the client contact mechanism.	Booking on calls, check calls and any other verbal or non verbal communications from site to the service provider must be made to a standard charge land line and will be paid by the Authority throughout the duration of the contract. Calls to mobiles or premium rate numbers are not permitted.	
1.13 Unauthorised Access/Information Release	<ul style="list-style-type: none"> a) The service provider shall not sponsor any person to visit site without the authority of the DO or his representative. b) No individual shall be allowed within the Security Control Posts/Centre without the authorisation of the DO or his representative. c) No Data, statistics, information or images are to be released without the authority of the DO or his representative. d) Visitors to Security Posts/Centre must sign the Visitor Book acknowledging confidentiality. 	
1.14 Service providers Management & Supervision of contract.	<ul style="list-style-type: none"> a) A suitably qualified or experienced Contract Manager shall formally meet with the Designated Officer (DO) monthly. b) The Contract Manger shall visit site no less than once every 10 days. c) Ad hoc visits by service providers' staff or management, who do not form part of the work team rota, are not allowed without the prior approval of the DO. d) The service provider shall appoint a suitably qualified or experienced site based supervisor, employed separately from a guarding task. e) The ratio of supervisor grade to guard is 1:6 f) The Contract Manger and Supervisor can be a combined role. g) Supervisor to be available for weekly scheduled meeting/briefs with DO, typically 1-hour duration. h) Contract Manager/Supervisor to provide statistics in line with the Key Performance Indicators (KPI) and Service Level Agreement (SLA). 	These requirements and parameters are measurable within the KPI process.

1. Command & Control	Requirement	Additional Information	
1.14 Service providers Management & Supervision of contract. CONTINUED	i) Present written report on finds or extraordinary events within 12-hours to DO. j) Present KPI statistics weekly to DO. k) Present SLA statistics monthly to DO. l) Ensure Assignment Instructions (AI's) reflect Standard Operating Procedures (SOPs), are current and meet DO approval.		
	m) Provision of two authority delivered training or communications days per calendar year to be made available for site based staff without loss of service provision	Ability to deliver single source message annually.	
1.15 Service provider to supply Staff clothing and Equipment.	a) Guards and supervisors to be dressed in clean, presentable uniforms including stout clean footwear. b) The uniform is to be approved by the DO. c) Foul weather clothing and appropriate footwear for each guard and supervisor shall be supplied. d) High visibility clothing shall be provided for personnel engaged in access control, security patrols, traffic-control or vehicle search duties. e) High intensity torches including consumables in sufficient number to allow the guard to execute their duties at all times. f) Suitable number of under vehicle search mirrors with illumination facility including consumables in sufficient numbers to allow the guard to execute their duties at all times. g) Unofficial Pin badges, tie clips, emblems etc must not be worn whilst on duty without the approval of the DO.	No unauthorised personal items of clothing or equipment, is to be worn or carried whilst on duty. These requirements and parameters are measurable within the KPI process.	
	h) Harness & Fall arresters or any other equipment required for the safe working at height (Rooftop and Gantry), this equipment must be maintained in accordance with any Health and Safety requirements. i) Safety helmets, ear defenders, gloves and light eye care are to be provided for staff involved in escorting contractors.	h) and i) are SyTG recommended enhancements above that required to provide minimum functionality and guard force effectiveness.	

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
<p>1.16 Service provider to align and embrace the MoD Code of Conduct in addition to any internal company Codes of Conduct.</p>	<p>Guards and Supervisors must abide with the basic code of conduct contained within BS 7499 and JSP 440 committing or condoning any one of the following will be regarded as a breach of this code of conduct:</p> <ul style="list-style-type: none"> • Neglecting or, without due and sufficient cause, failing to carry out promptly and diligently a required task within their job description whilst at work. • Leaving a place of work during any period of duty without due permission or sufficient cause, or failing to work to the agreed shift pattern. • Knowingly making or signing any false oral or written statement. • Destroying, mutilating, altering or erasing any official document or record. • Divulging to any other person who does not need to know, any matter which is protectively marked or is private business of the MoD's or contractors, past or present. • Soliciting or receiving any bribe or other consideration from any person. • Failing to account for documents, keys, a pass or passes, money, or property received in connection with their duty and/or the MoD's business. • Being uncivil to persons encountered in the course of their duty, or abusing their position of authority in connection with the discharge of the MoD's business. • Acting in a manner reasonably likely to bring discredit upon the MoD, or to fellow employees. • Wearing the uniform provided by the Company incorrectly or using MoD equipment without authority. • Carrying out or reporting for duty whilst under the influence of alcohol, controlled drugs, or solvents, or consuming any of these whilst on duty. Guards are to advise their supervisor if their performance may be affected by drugs prescribed by a medical practitioner. 	<p>Any contravention of the Code is a breach of contract, any member of the service provider's staff may be refused access to MoD property by the DO.</p> <p>These requirements and parameters are measurable within the KPI process.</p>

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
<p>1.17 Service provider to align to the MoD Code of Conduct. CONTINUED.....</p>	<ul style="list-style-type: none"> • Failing to report forthwith to the Designated Officer through the Commercial Guarding Management any conviction for a criminal or motoring offence (other than a minor motoring offence, which does not impact on the effective discharge of official duties). • Knowingly allow any access to MoD premises by any unauthorised person or persons. • Whilst on duty carrying any unauthorised equipment not issued to him/her as part of their duties, (e.g. Multifunction Knife). • Failing to report for duty at the correct time and place unless due notice and reasons have been given to their supervisor. • Sleeping whilst on duty. • Smoking or carrying any smoking materials including matches and cigarette lighters, in any prohibited place where such activities and materials are banned. 	<p>Any breach of this Code of Conduct may render the individual to be unacceptable for employment on MoD property. In such a case the Contractor will be notified by the Designated Officer accordingly and will replace the offending individual forthwith.</p> <p>These requirements and parameters are measurable within the KPI process.</p>
<p>1.18 Service provider to accommodate short notice/short duration requests.</p>	<p>The Designated Officer (following approved protocol) can invoke a Security Enhancement Clause (SEC) requiring additional guard to meet the security requirements of a higher alert state or to cover a specific event (e.g. VVIP visit)</p> <p>Guards to assist and participate in any training exercises that may be called under the direction of the DO.</p>	

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
<p>1.19 Service providers to receive briefing from Designated Officer or DO's representative to cascade to the guard for that day's duty.</p>	<p>The following list is typical but not exhaustive of the topics to be covered during the brief. A Level 5 supervisor grade is to be available no later than 09:30 to receive the brief.</p> <ul style="list-style-type: none"> • Changes to the threat. • Alert state. • Changes to the normal routine. • Planned events. • Details of known visitors, special events etc. • Any specific areas of responsibility: • Passes (personnel/vehicles). • Vehicle search. • Contractor's employees/vehicles. • Security of building. • Communications. • Administration. <p>This brief can be incorporated within the weekly morning scheduled meeting.</p>	<p>DO or his representative to ad hoc sample staff post briefing, to ensure message has been effectively cascaded and understood.</p>
<p>1.20 Service provider to maintain records</p>	<p>These records are typically but not exhaustive:</p> <ul style="list-style-type: none"> • Incident Book • DOB • Roster register • Key register • Lost/found property book • Passes issued and returned • Telephone log • Assignment Instructions • Staff contact details • Security Seal register • Swept Rooms register • Voice Alarm/ Public Address system • announcements • Patrol reports • Authorised signature list • Maintenance reporting Log 	<p>DO or his representative to audit no less than once per month, accuracy of records will form part of the KPI.</p> <p>These records can either be hand written or entered via a computer and stored electronically.</p>

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
<p>1.21 Guard Force Facilities</p>	<p>The following will be provide by the authority:</p> <ul style="list-style-type: none"> a) Heated & Lit security posts. b) MoD Telephone. c) Toilets. d) Cooking and messing facilities. e) Site specific Health & Safety training. f) Washing/Showering facilities g) Drying Room h) Furniture including suitable seating i) Rest/breakout area <p>The following is the responsibility of the service provider:</p> <ul style="list-style-type: none"> a) Cleanliness of the work area. b) Transport if required. c) Site specific Health & Safety equipment. 	<p>The service provider must ensure their work area is kept clean; this will form part of the KPI.</p> <p>Staffs are expected to have exemplary personal hygiene standards.</p>
<p>1.22 Service Providers Responsibilities</p>	<ul style="list-style-type: none"> a) To monitor and report in the first instance to the DO, any damage to any of the authorities' equipment, facilities or technology caused by the service providers' staff howsoever caused. b) To strive for zero non conformances or customer complaints. c) To build relationships with customers. d) To deal effectively, tactfully and swiftly with incidents using the utmost discretion where required. e) Complete all tasks as assigned diligently. f) To liaise with external agencies when requested to do so by the DO. g) To assist in the development of Standard Operating Procedures. h) Support and adhere to any Security Operating Procedures or Standard Operating Procedures. i) Training as covered in 1.9 a-h. 	<p>Forms part of the KPI and contractual agreement for replacement at service providers cost including supplementary cover should it be so required.</p> <p>Customer relationship forms a measurable within the KPI.</p>

1. <u>Command & Control</u>	<u>Requirement</u>	<u>Additional Information</u>
Section 2	Redacted	

	Redacted		

2. <u>Internal Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>	
	Redacted		

<u>2. Internal Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>
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<u>2. Internal Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>
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2. <u>Internal Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>	
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2. <u>Internal Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>	
	Redacted		
3. <u>External Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>	
	Redacted		

3. <u>External Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>	
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3. <u>External Tasks</u>	<u>Requirement</u>	<u>Additional Information</u>	
	Redacted		

3. External Tasks	<u>Requirement</u>	<u>Additional Information</u>	
	Redacted		

**Schedule 6 - Contractor's Commercially Sensitive Information Form
(i.a.w Condition A14)**

Contract No: CB/JFC3/005
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:

Schedule 7 – KEY PERFORMANCE INDICATORS (KPI)

The KPI marking becomes effective from month 3 after contract start to allow for initial training and familiarisation to be completed (exclusions accepted).
Please note the KPI numbering below relates to the SOR numbering in Schedule 5.

Key Performance Indicators - Command & Control		
1.4. Requirements of the Working Time Directive met.	2 Points = Yes	KPI = 2
	0 Points = No Escalation to commercial	
1.4. Contracted hours fully covered.	3 Points = All staff punctual	KPI = 2
	2 Points = Yes	
	0 Points = No Escalation to commercial	
1.4. Adequate, compliant breaks taken away from the workplace.	2 Points = Yes	KPI = 2
	0 Points = No	
1.5. Correct Ratio of approved reserves on standby.	2 Points = Yes	KPI = 2
	0 Points = No Escalation to commercial	
1.7. Medical Fitness Notifications – Annual or on change of Staff.	2 Points = Yes	KPI = 2
	0 Points = No	
1.8. Timely notification of Staff leaving. (Cumulative numbers recorded)	2 Points = Yes	KPI = 2
	0 Points = No – person already left.	
1.9		

Key Performance Indicators - Command & Control		
1.9 Redacted		KPI = 1
	Escalation to commercial	
1.9 Redacted		KPI = 1
1.9 Redacted		KPI = 2
1.9 Redacted		KPI = 2
1.11 Duty staff suitably security cleared.	2 Points = All duty officers suitably cleared	KPI = 1
	1 Point = 1 duty officer has SC	
	0 Points = Non compliant Escalation to commercial	
1.14 Contract Management – Site Visits.	2 Points = Greater than 3 visits per month	KPI = 1
	1 Point = 3 visits per month	
	0 Point = Non compliant Escalation to commercial	
1.14 Contract Management – Attendance at Monthly performance meetings.	2 Points = Yes	KPI = 2
	0 Points = No	
1.14 Presentation of statistics in line with agreed timescales.	2 Points = Yes	KPI = 2
	0 Points = No	

Key Performance Indicators - Command & Control		
1.15 Provision and maintenance of equipment.	2 Points = Equipment working effectively	KPI = 2
	1 Point = Equipment supplied but not functional.	
	0 Points = Equipment not supplied.	
1.16 Breach in Code of Conduct.	2 Points = No	KPI = 2
	0 Points = Yes	
1.16 (a) Standard of Officer – Appearance/Bearing.	2 Points = Officer smart with good attitude.	KPI = 2
	1 Point = Office not smart but good attitude.	
	0 Points = Officer not smart and poor attitude.	
1.17 (b) Standard of Officer – Work Ethics	3 Points = Compliments received.	KPI = 2
	2 Points = No complaints received.	
	1 Point = One or more complaints received.	
	0 Points = Officer suspended.	
1.19 Daily brief cascaded effectively.	2 Points = Yes	KPI = 2
	0 Points = No	
1.20 Maintenance and accuracy of site records controlled by the service provider.	2 Points = Records maintained to a satisfactory standard.	KPI = 2
	1 Point = Records maintained but to a unsatisfactory standard.	
	0 Point = Records not maintained.	
1.21 Working environment under the control of the Service provider is kept Clean & Tidy	2 Points = Yes	KPI = 2
	0 Points = No	
1.22 Damage reports.	2 Points = No	KPI = 2
	0 Points = Yes	Escalation to commercial

Key Performance Indicators - Command & Control

1.22 Response to incidents.	2 Points = All incidents reported to DO and backed up with written report in 12 hours.	KPI = 2
	1 Point = Incident reported to DO but not backed up with written report in 12 hours.	
	0 Points = Incident not reported.	
1.22 On site Management response to complaints.	2 Points = No complaints made.	KPI = 2
	1 Point = Complaints dealt with satisfactorily within 24-hours	
	0 Points = Failure to resolve complaint	
1.22. Daily duties performed.	2 Points = 100% of duties achieved.	KPI = 2
	1 Point = 95% of duties achieved.	
	0 Points = Less than 95% of duties achieved.	
1.22. Customer relations.	3 Points = Demonstrated exceptional customer service	KPI = 2
	2 Points = Excellent customer relations.	
	1 Point = Good customer relations, 1 negative comment received.	
	0 Points = Multiple negative comments received.	
Further sections redacted		

Key Performance Indicators - Internal Tasks

Schedule 8

TRANSFER REGULATIONS

PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

1.1 In this Schedule 8 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 8 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 Corps of Commissionaires Management Limited T/A Corps Security;

“**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 two months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 8 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.

Appendix 1

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1. Pursuant to paragraph 2.1.1 of this Schedule 8 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

- 1.7 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

1. DEFINITIONS

1.1 In this Schedule 8 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 8 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 8 Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 8, Part 1, in this Schedule 8 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 .

2. EMPLOYMENT

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

2.1.1 No earlier than one year 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 applicaton 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 8 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 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 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 8 (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.
- 2.1.3 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 8 (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.
- 2.1.4 Paragraphs 2.1.1 and 2.1.2 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 2.1.1 and 2.1.2. 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.
- 2.1.5 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 2.1.1, 2.1.2, 2.1.3 or 2.1.5 of this Schedule 8 Part 2.

- 2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 8 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.

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

- 2.2.1 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.

2.3 **Unexpected Subsequent Transferring Employees**

- 2.3.1 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;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(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 2.3.

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

2.4.1 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.

2.4.2 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.

2.4.3 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 2.4.3, 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.

2.5 Contracts (Rights of Third Parties) Act 1999

2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

2.5.3 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.

2.6 General

2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 8 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 8, 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

1. Pursuant to paragraph 2.1.2 of this Schedule 8, 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:

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 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 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.

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 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

1.7 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.