

**MOD Terms and Conditions for ITT**

**JFC6c/00027 Contract for the provision of Physical Development Facilities for Defence Medical Group (South West) Personnel.**

**Schedule 1 – Conditions of Contract:**

**1 Definitions - In the Contract:**

**The Authority** means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown; **Business Day** means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

**Contract** means the agreement concluded between the

Authority and the Contractor, including all terms and conditions, , specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2.c;

**Contractor** means the person, firm or company specified as such in the Contract;

**Contractor Commercially Sensitive Information** means the

information listed as such in the Contract, which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

**Contractor Deliverables** means the goods and / or services including packaging (and supplied in accordance with any QA

requirements if specified) which the Contractor is required to

provide under the Contract in accordance with the schedule of requirements.

**Effective Date of Contract** means the date stated on the

Contract or, if there is no such date stated, the date upon which both Parties have signed the Contract;

**Firm Price** means a price excluding Value Added Tax (VAT)

which is not subject to variation;

**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;

**Legislation** means in relation to the United Kingdom any Act of

Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972. **Notices** means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

**Parties** means the Contractor and the Authority, and Party shall be construed accordingly;

**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.

**2 General**

a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.

b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.

c. If there is any inconsistency between these terms and

conditions and the associated documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:

(1) the terms and conditions; (2) the schedules; and

(3) the documents expressly referred to in the

agreement.

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

e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as

a waiver of its rights under the Contract.

f. The Parties to the Contract do not intend that any term of the

Contract shall be enforceable by virtue of the Contracts (Rights of

Third Parties) Act 1999 by any person that is not a Party to it.

g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and

without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

**3 Application of Conditions**

a. These terms and conditions, schedules and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.

b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between

the Parties relating to the subject matter of the Contract.

**4 Disclosure of Information**

Disclosure of information under the Contract shall be managed in accordance with DEFCON 531 (SC1).

**5 Transparency**

a. Subject to Clause 5.b, but notwithstanding Clause 4, 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 5.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, including the Contractor Commercially

Sensitive Information.

c. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance

with Clause 5.b. The Contractor acknowledges and accepts that

its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information

Act 2000 or the Environmental Information Regulations 2004. d. For the avoidance of doubt, nothing in this Clause 5 shall

affect the Contractor’s rights at law.

**6 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 the Contract;

(4) marked with the number of the Contract; and

(5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the Contract, 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.

**7 Intellectual Property**

a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of

any intellectual property rights or a claim for Crown use of a UK

patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.

b. The Authority shall promptly notify the Contractor of any

infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim

**8 Supply of Contractor Deliverables and Quality Assurance** a. This Contract comes into effect on the Effective Date of Contract.

b. The Contractor shall supply the Contractor Deliverables to the

Authority at the Firm Price stated in the Contract.

c. The Contractor shall ensure that the Contractor Deliverables: (1) correspond with the specification;

(2) are of satisfactory quality (within the meaning of the

Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor’s skill and judgement; and

(3) comply with any applicable Quality Assurance

Requirements specified in the Contract.

d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of

the Contract in the UK. The Authority shall provide to the

Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

**9 Supply of Hazardous Contractor Deliverables**

a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 9. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Contract:

(1) the Technical Instructions for the Safe Transport of

Dangerous Goods by Air (ICAO), IATA Dangerous Goods

Regulations;

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

(3) the Regulations Concerning the International

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

b. Certification markings, incorporating the UN logo, the

package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be

marked on the packaging in accordance with the relevant regulation.

c. As soon as possible and in any event within the period specified in the Contract (or if no such period is specified no later

than one month prior to the delivery date), the Contractor shall provide to the Authority’s representatives in the manner and

format prescribed in the Contract:

(1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables are

Hazardous Contractor Deliverables; and

(2) for each Hazardous Contractor Deliverable, a Safety

Data Sheet containing the data set out at Clause 9.d, which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

d. Safety Data Sheets if required under Clause 9.c shall be provided in accordance with the REACH Regulations (EC) No

1907/2006 and any additional information required by the Health and Safety at Work etc. Act 1974 and shall contain:

(1) Information required by the Chemicals (Hazardous

Information and Packaging for Supply) (CHIP)

Regulations 2009 and / or the Classification, Labelling and

Packaging (CLP) Regulation 1272/2008 (whichever is applicable) or any replacement thereof; and

(2) where the Hazardous Contractor Deliverable is, contains or embodies a radioactive substance as defined

in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any

isotope); and

(3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at

a defined distance, for the condition in which it is packed. e. The Contractor shall retain its own copies of the Safety Data

Sheets provided to the Authority in accordance with Clause 9.d for 4 years after the end of the Contract and shall make them

available to the Authority’s representatives on request.

f. Nothing in this Clause 9 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

**10 Delivery / Collection**

a. The Contract shall specify whether the Contractor

Deliverables are to be delivered to the consignee by the

Contractor or collected from the consignor by the Authority.

b. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in

accordance with Clause 10.a.

c. The Authority shall be deemed to have accepted the Contractor Deliverables thirty (30) days after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

**11 Marking of Contractor Deliverables**

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

(1) in accordance with the requirements specified in the

Contract, or if no such requirement is specified, with the MOD stock reference number, NATO Stock Number (NSN) or alternative reference number specified in the schedule of requirements;

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

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

b. Where it is not possible to mark a Contractor Deliverable with the required particulars, these should be included on the package

in which the Contractor Deliverable is packed.

**12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)**

The Contractor shall pack or have packed the Contractor

Deliverables in accordance with any requirements specified in the

Contract and Def Stan 81-041 (Part 1 and Part 6).

**13 Progress Monitoring, Meetings and Reports**

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the Contract and

shall ensure that its Contractor’s representatives are suitably

qualified to attend such meetings.

**14 Payment**

a. Payment for Contractor Deliverables under the Contract shall be made via the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

b. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the

Authority of the performance of the Contractor’s obligations nor as

a waiver of its rights and remedies under this Contract.

c. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from

the Contractor to the Authority against any amount payable by the

Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government

Department.

**15 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 15.a the dispute shall be referred to arbitration and

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.

**16 Termination for 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:

a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (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;

(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 or any other contract with the

Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf,

or to its knowledge, unless before the contract is made

particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof

have been disclosed in writing to the Authority.

b. In exercising its rights or remedies to terminate the Contract under Clause 16.a. 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. c. Where the Contract has been terminated under Clause

16.a.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.

**17 Material Breach**

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with

immediate effect by giving written notice to the Contractor where

the Contractor is in material breach of its obligations under the Contract. Where the Authority has terminated the Contract under Clause 17 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor’s material breach of the Contract.

**18 Insolvency**

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

**19 The project specific DEFCONs and DEFCON SC variants that apply to this Contract are:**

As Specified at Schedule 1 Annex A – Additional Definitions of Contract.

**20 The special conditions that apply to this Contract are:**

As specified in the SOR at Schedule 2 & Schedule 1 Annex A – Additional Definitions of Contract.

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

As specified in the SOR at Schedule 2.

**Schedule 1 – Annex A – Additional Definitions of Contract**

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| **DEFCON No.** | **Edition** | **Title** |
| DEFFCON 502 (SC1) | (Edn.12/16) | Specification Changes |
| DEFFCON 503 (SC1) | (Edn.12/16) | Formal Amendments to Contract |
| DEFFCON531 (SC1) | (Edn.06/17) | Disclosure of Information |
| DEFFCON532B (SC1) | (Edn.12/16) | Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority) |
| DEFCON534 | (Edn.06/17) | Subcontracting and Prompt Payment |
| DEFCON538 | (Edn.06/02) | Severability |
| DEFCON566 | (Edn.10/16) | Change of Control of Contractor |
| DEFCON602B | (Edn.12/06) | Quality Assurance (Without Deliverable Quality Plan) |
| DEFCON609 (SC1) | (Edn.12/16) | Contractor's Records |
| DEFFCON 611 (SC1) | (Edn.12/16) | Issued property |
| DEFCON620 (SC1) | (Edn.12/16) | Contract Change Control Procedure |
| DEFCON656A | (Edn.08/16) | Termination for Convenience (Contracts Under £5M) |