



Ministry  
of Defence

**Michael Holloway**

DES LSOC Log Services  
Commercial Head

Logistic and Support Operating  
Centre  
Elm 3c, NH4  
#3360 Bristol,  
BS34 8JH

Email:  
Michael.holloway943@mod.gov.uk

Basetek Ltd.  
3 Lytham Road,  
Ipswich,  
Suffolk  
IP3 9BL

Your Reference:  
**REDACTED**

Our Reference:  
LSMS/012 – Maritime  
Consumables and  
Furnishings

Date: 31<sup>st</sup> July 2024

FAO: **REDACTED**

Dear **REDACTED**,

**Offer Of Contract LSMS/012 (MCF) for the Supply of Maritime Consumables and Furnishings**

1. As you are aware following the issue of the Standstill letters dated 18<sup>th</sup> July 2024, the Authority intends to enter into the above contract with you. As the Contract is a Framework Contracts have also been awarded to TVS Ltd and Scott Aerospace Ltd.
2. Basetek have won 911 lines of the Authority's requirement, which results in a current estimated MCF Framework value of £11,400,000 (Ex VAT) throughout the 4-year duration of Contract. It should be noted however that as the Contract is a Framework (and in keeping with its terms) orders and this value are not guaranteed. Furthermore, you will note that the Contract Award Notice (due to be issued) will contain a higher estimated value of £68m (Ex VAT). This is because under the terms of the Contract, the ITC process allows opportunity for you to be awarded additional business, which could increase the estimated value of your Contract. The Authority has therefore chosen to advertise the maximum combined value of the Authority's requirement but

are here making you aware in our Offer Letter the estimated value of your current Contract.

3. Please sign and return the enclosed final version of the Contract within 10 working days of the date of this letter to acknowledge your acceptance of the Terms and Conditions.
4. Please Note: In accordance with government policy, it is a requirement that the Authority measures progress against your 3 Social Value submitted as part of your Tender response (Tackling Economic Inequality, Fighting Climate Change, and Equal Opportunity). Therefore, upon acceptance of this offer you agree to work with the Authority to establish a set of KPIs (without monetary incentive, but in accordance with the terms of the Contract) within the first 3 months of award, to monitor performance throughout the life of the Contract.
5. Please note that no Contract will come into force until both parties have signed it. The Authority will countersign the Contract and return a copy of the same to you.
6. Payment will be made in accordance with the attached Terms and Conditions. If your company has not already provided its banking details to the Defence Business Services (DBS) Finance Branch, you will be contacted by the named Commercial Officer to provide this information as part of the Onboarding process to [Contracting, Purchasing and Finance \(CP&F\)](#).
7. The Authority may publish notification of the Contract and shall publish Contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person or might prejudice fair competition in the supply chain.
8. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.
9. To aid the Authority with obligations placed on it by HM Treasury regarding International Financial Reporting Standard (IFRS) 16, please advise in writing to the **named commercial officer** whether or not there are any assets (which are Contractor-owned or the Contractor has leased that are being used through the Contract) for which the Authority has a right-of-use explicitly or implicitly present within the Contract. Where you identify such assets, please provide a full list in writing, including their location and the extent of the right-of-use by the Authority. The lease term<sup>1</sup> will be assumed to be the duration of the Contract (from start and end dates); if the asset is not available for use for the Contract duration, please provide

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<sup>1</sup> Lease term includes:

- a. periods covered by an option to extend the lease if the MOD is reasonably certain to exercise that option; and
- b. periods covered by an option to terminate the lease if the MOD is reasonably certain not to exercise that option.

start and end dates of when the asset is available for use. Please refer to the [HM Treasury IFRS 16 Leases Application Guidance](#) for further information.

10. Under no circumstances should you confirm to any third party that you are entering into a legally binding contract for the Supply of Maritime Consumables and Furnishings prior to both parties signing the Terms and Conditions, or ahead of the Authority's announcement of the Contract award.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Holloway', with a stylized flourish at the end.

Michael Holloway  
Log Service Commercial Head



Ministry  
of Defence

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## Standardised Contract Terms and Conditions– SC2

SC2 (Edn 09/23)

### **General Conditions**

#### **1. General**

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
  - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their 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 themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their 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 the winding-up of the company 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 they 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 the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
  - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - (2) The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise.
  - (3) The expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
  - (6) Any decision, act or thing which the Authority is required or authorised to take or do

under the Contract may be taken or done only by the person (or its nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.

(7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

## **2. Duration of Contract**

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

## **3. Entire Agreement**

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

## **4. Governing Law**

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

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

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

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

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

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

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

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

(2) Clause 40.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the



arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the 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 their agents to accept on their 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 the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected there with.

## **5. Precedence**

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
  - (1) Conditions 1 - 44 (and 45 - 47, if included in the Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
  - (2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);
  - (3) the remaining Schedules; and
  - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 40 (Dispute Resolution).

## **6. Formal Amendments to the Contract**

- a. Except as provided in Condition 31 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
  - (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used) and;

- (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
- (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127. Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643 (SC2); or
- (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

**Changes to the Specification**

- d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.
- e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

**7. 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 7.
- 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 6 (Formal Amendments to the Contract).

**8. Severability**

- a. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
- (1) such provision shall (to the extent that it is invalid, illegal or unenforceable) be

given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

(2) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

#### **9. 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.

#### **10. 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.

#### **11. 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.

#### **12. Transparency**

a. Notwithstanding any other term of this Contract, including Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.

b. Subject to clause 12.c the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.

c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such Information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.

d. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in clause 12.e to 12.i. Where the Authority publishes Transparency Information, it shall:

- (1) before publishing, 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 (FOIA) or the Environmental Information Regulations 2004 (EIR), for the avoidance of doubt, including Sensitive information;
- (2) taking account the Sensitive Information set out in Schedule 5, consult with the Contractor where the Authority intends to publish Information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
- (3) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

#### Publishable Performance Information

- e. Within three (3) months of the effective date of Contract the Contractor shall provide to the Authority for its approval (such approval shall not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of Schedule 9.
- f. If the Authority rejects any draft Publishable Performance Information the Contractor shall submit a revised version of the relevant KPI Data Report for further approval by the Authority with five (5) business days of receipt of any notice or rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have an agreed version of the Publishable Performance Information.
- g. The Contractor shall provide an accurate and up-to-date version of the KPI Data Report to the Authority for each quarter at the frequency referred to in the agreed Schedule 9.
- h. Any dispute in connection with the preparation and/or approval of Publishable Performance Information, other than under clause 12.f, shall be resolved in accordance with the dispute resolution procedure provided for in this Contract.
- i. The requirements of this Condition are in addition to any other reporting requirements in this Contract.

### **13. Disclosure of Information**

- a. Subject to clauses 13.d to 13.i and Condition 12 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 their 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 their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. A Party shall not be in breach of Clauses 13.a, 13.b, 13.f, 13.g and 13.h 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) 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. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
  - (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) subject to clause 13.g below, 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 the Contract;
- (5) subject to clause 13.g below, 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. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with clauses 13.f.(4) or 13.f.(5) above, the Authority will endeavour to provide the Contractor with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under clause 13.f.(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.
- h. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- i. 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 their 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.
- j. Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

#### **14. 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.

#### **15. Change of Control of Contractor**

- a. The Contractor shall notify the Representative of the Authority at the address given in clause 15.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

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

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

and emailed to: [DefComrcISSM-MergersandAcq@mod.gov.uk](mailto:DefComrcISSM-MergersandAcq@mod.gov.uk)

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

d. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 15.a. The Authority shall act reasonably in exercising its right of termination under this Condition.

e. If the Authority exercises its right to terminate in accordance with clause 15.d the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

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

## **16. Environmental Requirements**

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

## **17. Contractor's Records**

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

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

- (1) to enable the National Audit Office to carry out the Authority's statutory audits and

- to examine and/or certify the Authority's annual and interim report and accounts; and
- (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to the provisions of Condition 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
- (1) the end of the Contract term;
  - (2) the termination of the Contract; or
  - (3) the final payment,
- whichever occurs latest.

#### **18. 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 the recipient's Business Day and otherwise on the first Business Day of the recipient immediately 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.

#### **19. 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 their 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.

### **Supply of Contractor Deliverables**

#### **20. Supply of Contractor Deliverables and Quality Assurance**

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
  - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
  - (2) discharge their 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 20.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 they become 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.

#### **21. Marking of Contractor Deliverables**

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 22 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

#### **22. Packaging and Labelling (excluding Contractor Deliverables containing**

**Munitions)**

- a. Packaging responsibilities are as follows:
  - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
  - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
  - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
  - (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:
  - (1) The Contractor shall provide Packaging which:
    - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
    - (b) is labelled to enable the contents to be identified without need to breach the package; and
    - (c) is compliant with statutory requirements and this Condition.
  - (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
    - (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
    - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
    - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 22.i to 22.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
  - (1) The Health and Safety At Work Act 1974 (as amended);
  - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
  - (3) The REACH Regulations 2007 (as amended); and
  - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted

quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

- (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- (2) The Air Navigation (Amendment) Order 2019.

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

f. The Contractor shall comply with the requirements for the design of MLP which include clauses 22.f and 22.g as follows:

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

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

DES LSOC SpSvcs--SptEng-Pkg1

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

[DESLSOC-SpSvcs-SptEng-Pkg1@mod.gov.uk](mailto:DESLSOC-SpSvcs-SptEng-Pkg1@mod.gov.uk)

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

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

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

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

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

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

(7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 22.f.(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

(8) The documents supplied under clause 22.f.(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

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

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

- (a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 22.f.
- (b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
  - i. a list of all SPIS which have been prepared or revised against the Contract; and
  - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
- (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 22.g.(1)(b).
- (2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
- (3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 22.g.(1)(b).
- (4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g.(1)(a) and 22.g.(1)(b).
- h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.
- i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
  - (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
    - (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
    - (b) Each consignment package shall be marked with details as follows:
      - i. name and address of consignor;
      - ii. name and address of consignee (as stated in the Contract or order);
      - iii. destination where it differs from the consignee's address, normally either:
        - (i). delivery destination / address; or
        - (ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
      - iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
        - (i). If aggregated packages are used, their consignment marking and

identification requirements are stated at clause 22.1.

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

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

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

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

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

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

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

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

- (a) class group number;
- (b) name and address of consignor;
- (c) name and address of consignee (as stated on the Contract or order);

- (d) destination if it differs from the consignee's address, normally either:
    - i. delivery destination / address; or
    - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
  - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
  - (f) the CP&F-generated shipping label; and
  - (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
- o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Condition 17 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging Contractor, then the Contractor shall be liable for the cost of replacing the Packaging.
- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at:  
<https://www.dstan.mod.uk/>
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.

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

### **23. Plastic Packaging Tax**

a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.

b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.

c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.

d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.

e. In accordance with Condition 17 the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.

f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:

- (1) confirmation of the tax status of any Plastic Packaging Component;
- (2) documents to confirm that PPT has been properly accounted for;
- (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
- (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.

g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 23.f above is accurate.

h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.

i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

### **24. Supply of Data for Hazardous Materials or Substances, Mixtures and Articles in Contractor Deliverables**

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

- b. The Contractor shall provide to the Authority:
- (1) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
  - (2) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
  - (3) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and/or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the Contractor, to allow safe use of the Article including, as a minimum, the name of that Substance.
- c. For Substances, Mixtures or Articles that meet the criteria list in clause 24.b above:
- (1) if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS/safety information and forward it to the Authority and to the address listed in clause 24.i below; and
  - (2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
- e. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- f. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details in Schedule 6 of:
- (1) activity; and
  - (2) the substance and form (including any isotope).
- g. If the Substances, Mixtures or Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details in Schedule 6 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 24.b.(1) and 24.c.(1), any information arising from the provisions of clauses 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Point of Contact as specified in the Schedule 3 as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet).
- i. So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
- (1) Hard copies to be sent to:



Hazardous Stores Information System (HSIS)  
Spruce 2C, #1260,  
MOD Abbey Wood (South)  
Bristol BS34 8JH

(2) Emails to be sent to:

DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk

j. SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for OME are not to be sent to HSIS and must be held by the respective Authority Delivery Team.

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

l. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Contractor Manual.

## **25. Timber and Wood-Derived Products**

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

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

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

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

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

d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.

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

f. The Contractor shall maintain records of all Timber and Wood-Derived Products

delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).

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

- (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 24.a or 24.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

- (1) verify the forest source of the timber or wood; and
- (2) assess whether the source meets the relevant criteria of clause 25.b.

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

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

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

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

- (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at [www.forestry.gov.uk](http://www.forestry.gov.uk)) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
- (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [www.fao.org](http://www.fao.org)).

## **26. Certificate of Conformity**

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.
- c. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).
- d. The Information provided on the CofC shall include:
  - (1) Contractor's name and address;
  - (2) Contractor unique CofC number;
  - (3) Contract number and where applicable Contract amendment number;
  - (4) details of any approved concessions;
  - (5) acquirer name and organisation;
  - (6) Delivery address;
  - (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
  - (8) description of Contractor Deliverable, including part number, specification and configuration status;
  - (9) NATO Stock Number (NSN) (where allocated);
  - (10) identification marks, batch and serial numbers in accordance with the Specification;
  - (11) quantities;
  - (12) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

- e. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 26.d. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

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

- a. The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 27.a are included in their subcontracts with those Contractors identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

## **28. Delivery / Collection**

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the

Authority.

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

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

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

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

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

- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or
- (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

## **29. Acceptance**

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

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

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

### **30. Rejection and Counterfeit Materiel**

#### **Rejection:**

- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of the Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.
- b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

#### **Counterfeit Materiel:**

- c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:
- (1) notify the Contractor in writing of its suspicion and reasons therefore;
  - (2) where reasonably practicable, and if requested by the Contractor within 10 Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
  - (3) at its discretion, provide the Contractor with a sample of the Contractor Deliverable or consignment for validation or testing purposes by the Contractor (at the Contractor's own risk and expense);
  - (4) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c.(2).(i) or the provision of a sample at 30.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
  - (5) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel.
- d. Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a and 30.b (Rejection), and provide written notification to the Contractor of the rejection.
- e. In addition to its rights under 30.a and 30.b (Rejection), where the Authority has determined that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:
- (1) retain any Counterfeit Materiel; and/or
  - (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;
- and such retention shall not constitute acceptance under Condition 29 (Acceptance).

f. Where the Authority intends to exercise its rights under clause 30.e, the Contractor may, subject to the agreement of the Authority (and at the Contractor's own risk and expense and subject to any reasonable controls and timeframe agreed), arrange for:

- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
- (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is reasonably satisfied does not contain Counterfeit Materiel.

g. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.e, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.f but the Contractor fails to do so within the period agreed and subject to clause 30.k, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
- (2) to pass it to a relevant investigatory or regulatory authority;
- (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall, at the discretion of the Authority, be shared with the Contractor; and/or
- (4) to recover the appropriate, attributable, and reasonable costs incurred by the Authority in respect of testing, storage, access, and/or disposal of it from the Contractor; and exercise of the rights granted at clauses 30.g.(1) to 30.g.(3) shall not constitute acceptance under Condition 29 (Acceptance).

h. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.g.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.g.(4) then the balance shall accrue to the Contractor.

i. The Authority shall not use a retained Contract Deliverable or consignment other than as permitted in clauses 30.c – 30.k.

j. The Authority may report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

k. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 30.c – 30.k except:

(1) in relation to the balance that may accrue to the Contractor in accordance with clause 30.h; or

(2) where it has been determined in accordance with Condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 30.c.(5). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

### **31. Diversion Orders**

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

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

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

- d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

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

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

Licences and Intellectual Property

### **33. Import and Export Licences**

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
  - (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
    - (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
    - (b) the end use as: For the Purposes of HM Government; and
  - (2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- c. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition materiel shall mean

information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

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

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

- (1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
- (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

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

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

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

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

j. The Authority shall provide such assistance as the Contractor may reasonably require in



obtaining any UK export licences necessary for the performance of the Contract.

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

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

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

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

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

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

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

p. Where following receipt of materiel from a Subcontractor or any of their other Contractors restrictions are notified to the Contractor by that Subcontractor, Contractor or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 10 days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 10 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these

circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

r. In the event that the restrictions notified to the Authority pursuant to clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with clause 33.l, termination under clause 33.t will be in accordance with Condition 43 (Material Breach) and the provisions of clause 34.v will not apply.

s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of clause 32.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.

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

u. Where:

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

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

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

referenced in the Contract.

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

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

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

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

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

b. If the Information required under clause 34.a has been notified previously, the Contractor may meet their 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 Condition shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949;
- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause 34.c does not extend to use by the Authority of anything

supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

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

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

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

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

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

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

- (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act

1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.

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

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

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

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

(1) infringement or alleged infringement by the Contractor or their Contractors 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, their officers, agents and employees against liability, including costs as a result of:

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

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

n. The general authorisation and indemnity is:

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

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

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

- (4) the Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
- (5) following a notification under clause 34.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
- (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in Condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.
- Notification of Intellectual Property Rights (IPR) Restrictions**
- r. Where any of the conditions listed below (1 to 3) have been added to the Conditions of the Contract as project specific DEFCONs at Clause 45, or where required by Clauses 34.a. - 34.q., the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 10 (Notification of Intellectual Property Rights (IPR) Restrictions).
- (1) DEFCON 15 - including notification of any self-standing background Intellectual Property;
- (2) DEFCON 90 - including copyright material supplied under clause 5;
- (3) DEFCON 91 - limitations of Deliverable Software under clause 3b.
- s. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 10.
- t. Any amendment to Schedule 10 shall be made in accordance with Condition 6.

## **Pricing and Payment**

### **35. Contract Price**

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract

Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).

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

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

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36.b the Contractor will be required to register their details (Contractor on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

b. Where the Contractor submits an invoice to the Authority in accordance with clause 36.a, the Authority will consider and verify that invoice in a timely fashion.

c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

d. Where the Authority fails to comply with clause 36.a and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36.c after a reasonable time has passed.

e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.

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

### **37. Value Added Tax**

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

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

c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the

Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.

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

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

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

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

### **38. Debt Factoring**

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

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f;
- (2) all related rights of the Authority under the Contract in relation to the recovery of



- sums due but unpaid; and
- (3) the Authority receiving notification under both clauses 38.b and 38.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under clauses 38.a.(1) and 38.a.(2); and
- (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a.(1) and 38.a.(2).
- d. The provisions of Condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

### **39. Subcontracting and Prompt Payment**

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a subcontract, they shall cause a term to be included in such subcontract:
- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
- (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
- (3) providing that where the Contractor fails to comply with clause 39.b.(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b.(2) after a reasonable time has passed; and
- (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 39.b.(1) to 39.b.(4).

## **Termination**

### **40. Dispute Resolution**

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt, anything said, done or produced in or in relation to the

arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

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

##### **Insolvency:**

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

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
  - (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
  - (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
  - (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
  - (6) where the Contractor is either unable to pay their 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 their debts if:
    - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
    - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
  - (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (8) the court making an award of sequestration in relation to the Contractor's estates.
- Where the Contractor is a company registered in England:
- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (10) the court making an administration order in relation to the company; or
  - (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (12) the company passing a resolution that the company shall be wound-up; or
  - (13) the court making an order that the company shall be wound-up; or
  - (14) the appointment of a Receiver or manager or administrative Receiver.

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

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

**Corrupt Gifts:**

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

- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
  - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

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

e. In exercising its rights or remedies under this Condition, the Authority shall:

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

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

**42. Termination for Convenience**

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business days written notice (or such other

period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

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

- (1) not start work on any element of the Contractor Deliverables not yet started;
- (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
- (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b.(2) and 42.b.(3) of this Condition.

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

- (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
  - (a) in the possession of the Contractor at the date of termination; and
  - (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
- (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
  - (a) all such unused and undamaged materiel; and
  - (b) Contractor Deliverables in the course of manufacture,that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
- (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

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

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
- (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

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

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

- (1) the name of the Contractor shall be substituted for the Authority except in clause 42.c.(1);
- (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and
- (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 42.

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

#### **43. Material Breach**

a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.

b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

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

#### **44. Consequences of Termination**

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

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

DEFCON 5J (18/16) - Unique Identifiers

DEFCON 14 (11/22) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

DEFCON 82 (06/21) - Special Procedure for Initial Spares

DEFCON 90 (06/21) - Copyright

DEFCON 91 (06/21) - Intellectual Property Rights in Software

DEFCON 035 (06/21) - Progress Payments

DEFCON 117 (SC2) (07/21) - Supply of Information for NATO Codification and Defence Inventory Introduction

DEFCON 127 (08/21) - Price Fixing Condition for Contracts of Lesser Value

DEFCON 524A (12/22) - Counterfeit Material  
DEFCON 532A (05/22) - Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)  
DEFCON 565 (07/23) - Supply Chain Resilience and Risk Awareness  
DEFCON 602A (04/23) - Quality Assurance (with Deliverable Quality Plan)  
DEFCON 627 (11/21) - Quality Assurance – Requirement for a Certificate of Conformity  
DEFCON 620 (SC2) (06/22) - Contract Change Control Procedure  
DEFCON 624 (SC2) (08/22) - Use of Asbestos  
DEFCON 630 (SC2) (02/18) - Framework Agreements  
DEFCON 637 (05/17) - Defect Investigation and Liability  
DEFCON 647 (SC2) (05/21) - Financial Management Information  
DEFCON 649 (SC2) (12/21) - Vesting  
DEFCON 658 (10/22) - Cyber  
DEFCON 674 (03/21) - Advertising Subcontracts  
DEFCON 678 (09/19) - SME Spend Data Collection  
DEFCON 687A (06/21) - Provision of a Shared Data Environment Service  
DEFCON 707 (10/23) Rights in Technical Data

## **General Conditions**

### **AUTHORISATION BY THE CROWN FOR USE OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS**

Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

### **Intellectual Property Rights**

The Contractor shall not place any subcontract or order involving the design or development of equipment required under this contract without the prior written consent of the Authority. Unless otherwise agreed, such consent will be conditional on the proposed subcontractor concluding a direct agreement with the Authority in the form set out in Annex to the Contract. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the subcontractor. If, in any case the Contractor is unable to comply with this condition they shall report the matter to [appropriate Director Commercial] and await further instructions before placing the subcontract or order.

## 46. Special conditions that apply to this Contract

### 46.1 LIMITATIONS ON LIABILITY

#### Definitions

46.1.1 In this Condition 46.1 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

(1) UK GDPR;

(2) DPA 2018; and

**(3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;**

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

‘DPA 2018’ means the Data Protection Act 2018;

“Law” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body.

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in [cross refer to service credit regime in the contract];

“Term” means the period commencing on [the commencement date / the date on which this Contract is signed / the date on which this Contract takes effect] and ending on the expiry of 4 years or on earlier termination of this Contract.



'UK GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

### **Unlimited liabilities**

46.1.2 Neither Party limits its liability for:

46.1.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

46.1.2.2 fraud or fraudulent misrepresentation by it or its employees;

46.1.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

46.1.2.4 any liability to the extent it cannot be limited or excluded by law.

46.1.3 The financial caps on liability set out in Clauses 46.1.4 and 46.1.5 below shall not apply to the following:

46.1.3.1 for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:

46.1.3.1.1 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and Condition 34 (Third Party IP – Rights and Restrictions);

46.1.3.1.2 the Contractor's indemnity in relation to TUPE at Schedule not applicable;

46.1.3.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:

46.1.3.2.1 the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts);

46.1.3.2.2 the Authority's indemnity in relation to TUPE under Schedule – not applicable;

46.1.3.3 breach by the Contractor of DEFCON 532A (SC2) Data Protection Legislation; and

46.1.3.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

46.1.3.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 (SC2) or the Defence Reform Act 2014 and/or the

Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clauses 46.1.4 and/or 46.1.5 below.

### **Financial limits**

46.1.4 Subject to Clauses 46.1.2 and 46.1.3 and to the maximum extent permitted by Law:

46.1.4.1 throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

46.1.4.1.1 in respect of DEFCON 76 (SC2) Not Applicable;

46.1.4.1.2 in respect of Condition 43b two million pounds (£2,000,000.00) in aggregate;

46.1.4.1.3 in respect of DEFCON 611 (SC2) not applicable; and

46.1.4.1.4 in respect of condition 28d two million pounds (£2,000,000.00) in aggregate;

46.1.4.2 without limiting Clause 46.1.4.1 and subject always to Clauses 46.1.2, 46.1.3 and 46.1.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with condition 47.2, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be two million pounds (£ 2,000,000.00) in aggregate.

46.1.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 46.1.4.1 and 46.1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 46.1.4.1 and 46.1.4.2 of this Contract.

46.1.5 Subject to Clauses 46.1.2, 46.1.3 and 46.1.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

46.1.6 Clause 46.1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

### **Consequential loss**

46.1.7 Subject to Clauses 46.1.2, 46.1.3 and 46.1.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- 46.1.7.1 indirect loss or damage;
- 46.1.7.2 special loss or damage;
- 46.1.7.3 consequential loss or damage;
- 46.1.7.4 loss of profits (whether direct or indirect);
- 46.1.7.5 loss of turnover (whether direct or indirect);
- 46.1.7.6 loss of business opportunities (whether direct or indirect); or
- 46.1.7.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

46.1.8 The provisions of Clause 46.1.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

46.1.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:

46.1.8.1.1 to any third party;

46.1.8.1.2 for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and

46.1.8.1.3 relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

46.1.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

46.1.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

46.1.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

46.1.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);

46.1.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;

46.1.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);

46.1.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

46.1.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

### **Invalidity**

46.1.9 If any limitation or provision contained or expressly referred to in this Condition 46.1 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 46.1.

### **Third party claims or losses**

46.1.10 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and Condition 34 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

46.1.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

46.1.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

### **No double recovery**

46.1.11 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to

recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

## **46.2 Russian and Belarusian Exclusion Condition**

46.2.1 The Contractor shall, and shall procure that their Sub-contractors shall, notify the Authority in writing as soon as they become aware that:

46.2.1.1 the Contract Deliverables and/or Services contain any Russian/Belarusian products and/or services; or

46.2.1.2 that the Contractor or any part of the Contractor's supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:

46.2.1.2.1 registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or

46.2.1.2.2. which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

46.2.2 The Contractor shall, and shall procure that their Sub-contractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Contract Deliverables and/or Services.

46.2.3 The Authority shall consider the notification and information provided by the Contractor and advise the Contractor in writing of any concerns the Authority may have and/or any action which the Authority will require the Contractor to take. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 business days of receipt of the Authority's written concerns, for the Authority's consideration.

46.2.4 The Contractor shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts.

## **47 The processes that apply to this Contract are**

### **47.1 Key Performance Indicators**

(b) Performance will be measured against the Key Performance Indicators (KPIs) relating to the fulfilment of order lines. The Contractor is required to monitor their

performance each month and provide a finalised KPI Report to the Authority by the 5th business day of each subsequent calendar month for review and agreement by the Authority. Timely submission of KPI Reports will be monitored by a Performance Indicator, failure to supply a KPI report on time for 2 months consecutively will result in the Supplier providing a Remediation Plan (Annex K). The performance standards are set out in the Table below:

KPI	KPI Measure	KPI Description	Target %		
1	The total number of Order lines ready for collection in previous month, On Time In Full (OTIF)	<p>The Contractor is required to submit to the Authority the number of orders with a lead time due date for the previous month. From this data the Contractor is to evidence the number of orders which successful achieved/met its lead time by being ready for collection OTIF.</p> <p><i>For example: The report provided on the 5<sup>th</sup> business day in October shall contain the total number of orders with a lead time due date in the month of September. The Contractor will then calculate the percentage of those orders which met their lead time.</i></p>	Green 90% and higher	Amber 89-87%	Red 86% and below

- c) Performance under KPI 1 will be measured against the contracted procurement lead time in accordance with Annex A (Statement of Requirement) unless a variance to the contracted Procurement Lead Time has been agreed by the Authority's Commercial Officer in advance of the lead time being due. Lead times will commence on the date of order placement and ends on the date the Contractor raises the order ready for collection (by MOD Transport).
- d) An order subject to under KPI 1 is not considered OTIF unless the full quantity is ready for collection on or before the contracted lead time. In the event a Contractor can foresee an order missing its lead time, the Contractor can, at their own discretion, choose to part deliver where possible, however the order line will be deemed a fail unless the full quantity is ready for collection by its contracted lead times.
- e) Contractors may submit mitigations within their KPI Report (Annex E) against individual lines where it is believed the lead time was missed due to reasons caused by the Authority. Examples include but are not limited to, an item missing a lead time

by (x) days due to the Authority taking (x) days to approve an unexpected technical query, or obsolescence.

- f) Mitigations will be reviewed on a case-by-case basis by the Authority and will only be accepted where sufficient supporting evidence has been provided.
- g) The Authority reserves the right to reject any mitigation. In these instances, the Authority's decision will remain final.

#### 47.2 Service Credits

- a) Should a Contractor score a Red or Amber on a KPI in one given month, the Contractor is to calculate the value of service credits due to the Authority for the underperforming KPI in accordance with the table below. The total value of service credits for the month must be detailed within the Contractors KPI report, alongside a running total for the Quarter.

	Amber	Red
Service Credit	1% of the affected Order Line values.	2% of the affected Order Line value.

- b) In any given month where a Contractor has achieved an Amber or Red in KPI 1 and service credits are due, but the Contractor was able to partially deliver one or more of the items within the late order by the contracted lead time, The Contractor can deduct the service credit value of the on time items for that order line and the subsequent monthly total. For example, 1x order is for 20 lightbulbs, 10 lightbulbs were delivered by the lead time, 10 were late, in this instance service credits are due for only the 10 late items. The Contractor is required to provide evidence and a breakdown of their service credit calculations in their KPI report in these instances.
- c) Contractors can claim back the value of any month's service credit where they have subsequently restored their KPI performance to Green for two concurrent months following a month of Red performance.
- d) On a quarterly basis, and reportable as part of the Quarterly Review, the Contractor shall confirm the total service credit value available to the Authority for the Quarter. Following agreement of the total value due, the Authority shall within thirty (30) days provide a list of products to procure under the service credit.

#### 47.3 Remediation Plan

- (a) Should the Contractor achieve an AMBER or RED status for the KPI for two consecutive months a remediation plan must be provided to the Authority within five (5) Business Days from the end of the second calendar month for the Authority's approval. If performance against the KPI remains AMBER or RED for three consecutive months, it will be deemed RED until service is restored to GREEN for two consecutive months and the Authority shall be entitled to claim appropriate Service Credits for all items delivered

late or rejected in accordance with the KPI.

(b) Remediation plans must be submitted to the Authority using the Template found at Annex K. Remediation plans must contain as a minimum:

- i) description and reasons for the underperformance;
  - ii) any resultant impacts on future orders;
  - iii) actions to be taken to resolve the underperformance – including action owner;
  - iv) remediation schedule inclusive of a firm date for returning the performance to green.
- e) The Contractor is to submit their Remediation Plan to the Authority for acceptance.
- f) A Contractors Remediation Plan will not be considered complete until the Supplier meets their Firm Resolution date and further maintains a Green performance for 2 consecutive months following the resolution date.
- g) The Contractor shall identify a remediation team which may include additional resource (internal or external) who shall be a dedicated resource to be used solely in support of Contract remediation and funded by the Contractor at no further cost to the Authority.
- h) The Contractor is to schedule monthly meetings with the Authority to provide progress updates against the Remediation Plan.
- i) Continuous poor performance (meaning RED level Performance on a KPI for three (3) or more consecutive months) or failed delivery against a Remediation Plan constitutes a Material Breach of Contract under Condition 43 (Material Breach).
- j) Notwithstanding the above, in the event that the Contractor continuously fails (meaning RED level Performance for three (3) or more consecutive months) to meet the requirements of the Contract and has failed to deliver against their Remediation Plan, the Authority shall, without limiting any of its other rights and remedies, be entitled to terminate the Contract in accordance with Condition 43 (Material Breach).

#### 47.4 Gainshare

- a) Gainsharing is an approach to the review and adjustment of an existing contract where the adjustment provides benefits to both Parties. It is a mutual activity requiring the agreement of both Parties to the Contract adjustment. The potential for mutual advantage is the key to gainsharing. The gain, benefit or advantage to be shared is not necessarily financial, though financial benefits are likely to feature strongly. Any financial benefits will be shared between the Parties and, where applicable, through the Contractors supply chain.
- b) During the period of the Contract, the Parties shall endeavour to identify and notify the other Party of any areas of improvement which could be of significant mutual benefit to both Parties, including through collaborative processes. Such gainsharing opportunities shall be listed within the Contractor's Quarterly Progress Reports. Gainshare principles will not affect either the Contractor's freedom to manage as set out in the terms and conditions of the Contract or to rely on the Authority's reasonable approvals as required under the Contract to ensure the smooth and efficient operation of the Contract.
- c) Both Parties acknowledge that there is an agreed baseline for the prices/pricing arrangements in respect of the work to be undertaken under the Contract and that significant changes to that baseline which lead to cost reductions could form part of



- any gainshare arrangement.
- d) Each gainshare proposal will be considered on its merits and the parties shall agree any amendments to the Contract and the Contract price based on a sharing of the net effect of all identified and quantified costs and benefits for each proposal.
  - e) Nothing in this Condition shall obligate either Party to agree to any proposal raised by the other Party under this Condition.
  - f) If the Authority and/or the Contractor identify a significant process change that could potentially lead to an improvement, then a Cost Benefit Analysis (CBA) shall be undertaken by the organization generating that improvement for agreement by the other Party.
  - g) The CBA shall identify the benefits to be gained from such a change both in terms of cost, technical and process improvement. In the event both Parties agree the CBA then the proposed improvement shall be implemented through formal contract amendment.
  - h) The share of any gains will be defined as part of the activity of the CBA.
  - i) In the instance when the Authority is to order a quantity of 10% or more than the stated quantity and/or MOQ within Annex A – Statement of Requirement, then it is assumed that the unit price will be subject to a gainshare opportunity through the premise of bulk buying. In this instance the Contractor shall report these potential savings to the Authority within 5 working days and where a 50/50% of the saving shall be applied. The Authority's 50% split shall be applied as a service credit against the contract, where service credits are not possible, a rebate payment must be paid.

#### 47.5 ITC Procedure

- a) In instances where the Authority requires a new item to be added to the contract, or if an item is has become obsolescent and no appropriate FFF alternative within the current price range has been identified, or where an item needs recompeting, the Authority will issue an Invitation to Compete (ITC) to all Contractors.
- b) If issued, the ITC (Annex F) will detail:
  - i) the required NSN and if applicable a Part Number or where the NSN and Part Number is no longer available due to obsolescence, an Obsolescent NSN for the Contractor to provide an alternative. ITCs may include more than one NSN for Contractors to bid for;
  - ii) estimated quantities/ forecast for each year;
  - iii) Crisp IMC;
  - iv) CSIS NSC;
  - v) DofQ;
  - vi) Packaging Requirement;
  - vii) CSIS Description
  - viii) QA Requirement;
  - ix) Magnetic Group Code;
  - x) Delivery method;
  - xi) Commercial Point of Contact for clarifications and submission;
  - xii) Timeframe for bidding, final date and time for submission of the completed Bidding Sheet and supporting documents.

#### **47.6 ITC Clarification Process**

- a) Any clarification questions relating to an ITC must be submitted by the Contractor by e-mail to the Commercial officer listed on the ITC. Clarifications must be submitted no later than 3 business days before the final submission date.
- b) The Authority will respond to all clarifications as soon as possible, but no later than 3 business days before ITC deadline, via email to all Framework Providers who have been issued the ITC, without disclosing the originator of the clarification. If a Framework Provider wishes the Authority to treat a clarification as confidential and not issue the response to all Framework Providers, it must state this when submitting the clarification. If, in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Framework Provider and it will have an opportunity to withdraw the clarification. If the clarification is not withdrawn, the response will be issued to all Framework Providers. Where a question reveals a piece of information that could significantly impact the Framework Providers' responses to the ITC, this may result in an extension of the Bidding Sheet return date.
- c) The Authority reserves the right (but is not obliged) to seek clarification of any aspect of a Framework Provider's response to an ITC during the evaluation phase, where necessary for the purposes of carrying out a fair evaluation. Framework Providers are required to respond to each clarification within 2 business days, unless an extension has been requested and accepted by the Authority. Failure to do so may render the ITC response non-compliant and the bid may be rejected.

#### **47.7 ITC Completion and Submission**

- (a) The Authority shall:
  - i. allow a minimum of 2 weeks for Framework Providers to submit a response to the ITC; and
  - ii. have the right to reject a Framework Provider's bid if its response to the ITC is not received by the date and time specified as the final date of submission in the ITC.
- (b) Upon receipt of an ITC, the Contractor, should they choose to bid, shall:
  - i. contact the Commercial listed on the ITC Document with any clarification questions, prior to the date for submission of the completing the Bidding Sheet;
  - ii. fully complete the relevant ITC documents, Annex G to Annex J which the Authority will provide with the ITC ;
  - iii. provide a FIRM price for each remaining year of the contract. Prices are to be provided in GBP ex VAT;
  - iv. provide a lead time, the lead time must be achievable but not excessive, the Authority may seek clarification if a lead time is deemed excessive;
  - v. provide an MOQ if applicable;
  - vi. submit the completed Bidding Sheet by email, to the Commercial Officer listed on the ITC, by the date and time specified in the ITC as the final date for submission of the completed Bidding Sheet;
  - vii. agree that bids shall remain open for acceptance by the Authority for 1 month from the submission date on the ITC, unless otherwise stated on the ITC.

#### **47.8 Bid Evaluation**

- (a) Completed Bidding Sheets submitted by Framework Providers in response to an ITC will be evaluated by the Authority to determine technical compliance and lowest price.
- (b) Bids must remain open for acceptance for 30 Calendar Days following the submission deadline.
- (c) The lowest price NSN per compliant tender shall be the bid that:
- is compliant with all of the evaluation criteria detailed at within the issued ITC documents;
  - and represents the lowest total cost to the Authority when multiplied by the full estimated quantity. If an MOQ has been provided which exceeds the estimated quantities, then the price will be multiplied by the MOQ.
- (d) For ITC's where more than one NSNs is being quoted, each NSN will be evaluated individually. This may lead to more than one winning Framework Provider.

#### Example Evaluation:

Framework Contractor (F/S)	NSN	Year 1 Est. Qty	Year 2 Est. Qty	Year 3 Est. Qty	Year 4 Est. Qty	Min Order Qty	Price Yr 1	Price Yr 2	Price Yr 3	Price Yr 4	Total Line-Item Price
F/S 1	ABCDEF	5	8	7	3		£10	£10.49	£10.90	£11.05	£243.37
F/S 1 evaluation breakdown						(5x10) + (8x10.49) + (7x10.90) + (3x 11.05)					
F/S 2	ABCDEF	5	8	7	3	10	£9.50	£10	£10.55	£11	£305.00
F/S 2 evaluation breakdown						(10x9.50) + (10x10) + (0x10.55) + (10x11)					
F/S 3	ABCDEF	5	8	7	3		£11	£11.33	£12	£12.45	£266.99
F.S 3 evaluation breakdown						(5x11) + (8x11.33) + (7x12) + (3x12.45)					
F/S 4	ABCDEF	5	8	7	3	5	£10.75	£11.30	£12.00	£12.50	£290.65
F/S 4 evaluation breakdown						(5x10.75) + (8x11.30) + (7x12) + (5x12.50)					

#### 47.9 Award of an ITC

- (a) Following conclusion of the evaluation, all Framework Providers will receive a letter of outcome (Successful or Unsuccessful). All Framework Providers will be notified of the outcome of the ITC on the same day.
- (b) The successful Framework Provider(s) will receive a DEFFORM 10b Offer of Contract Amendment, with an updated Annex A- Statement of Requirement. The Framework Provider(s) shall return their unqualified acceptance of the offer of

Amendment to Contract by completing of the DEFFORM 10b, by the date specified in the letter.

(c) The Authority reserves their right to cancel, postpone or delay the award of the ITC at any time before the issuing of a contract amendment.

#### 47.10 Lead Time Revision

(a) To enable lead times to remain achievable and fall in line with market fluctuations, Framework Providers will be able to submit revised lead times, for line items they supply, on an annual basis.

(b) Two months prior to the revised lead times coming into effect, The Authority will issue to each Framework Contractor, a copy of their Annex A -Statement of Requirements and an updated estimated annual forecast. Contractors will be required to update the 'Revised Lead Time Column' for each line item.

(c) Revised Lead Times must be:

- i. Challenging yet achievable;
- ii. encompassing of all actions required from placement of order through to being ready for collection by the MOD delivery partner;
- iii. capable of supporting quantity fluctuations;
- iv. FIRM and not subject to fluctuation.

(d) The Authority will review all revised lead times and may seek supporting evidence from the Contractor if they deem a lead time to have increased by an unreasonable amount.

(e) The Authority reserves the right to reject any revised lead time where evidence to support the increase cannot be provided. In these instances, the Contractor must revert to their originally Tendered Lead Time.

(f) Once all Lead Times have been agreed, the Authority will issue a Framework Amendment to all Contractors updating Annex A.

#### 47.11 Ad- Hoc Price increases

(a) In exceptional circumstances the Contractor may request a price revision to an individual NSN. The Authority will consider the change in price only where the Contractor can demonstrate the following:

- i. Evidence that the cost increase is unviable for the Contractor
- ii. Evidence the reason for the increase in cost
- iii. Provide 3 quotations to show the market has sufficiently been tested and where necessary, provide suitable FFF alternatives.
- iv. Provide a breakdown in cost to include profit rate.

(b) Where an ad hoc price increase is accepted, the Contractor must commit to an ongoing review of the market and revert prices to the original Contracted prices should a decrease in supply chain prices be identified.

(c) The Authority reserves the right reject any price increase which is deemed excessive and/or where sufficient evidence cannot be provided.

(d) In instances where the Authority rejects a price increase request the Authority may revert to the ITC process detailed in condition 47.5 to recompet the item.

(e) If a price increase is accepted, the Authority will issue a Contract Amendment to the Contractor to formally accept the revised price.

**47.12 Transition**

- (a) Upon contract commencement, the first two months of the contract will be a transition period for both the Contractors and the Authority.
- (b) The following activities are to be completed by the Contractor during the transition period:
  - i. Set up (if necessary) any supply chain contracts;
  - ii. Set up an account for the Mod Delivery Partner;
  - iii. Assist the Authority (where necessary) with Contractor onboarding to the payment system;
  - iv. Provide the following plans:
    - (1) Project Management Plan – within 4 weeks of Contract Award
    - (2) Risk Management Plan – compliant within JSP 892.
    - (3) Risk Register – any identified risk by the Contractor must be made aware to the Authority within 20 working days of identification.
    - (4) Transition Management Plan – within 2 weeks of Contract Award.
- (c) Contractors may receive orders from the Authority during the transition period. Contractors are required to deliver and fulfil all orders received.
- (d) During the transition period Contractors will be provided a grace period from KPI performance measures. Any orders raised within the transition period which exceeds its lead time, should appear on the KPI report with a 'Transition Mitigation' stated within the comments.

**Offer and Acceptance**

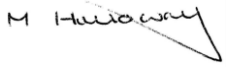
**Contract LSMS/012 for the Supply of Maritime Consumables and Furnishings**

This Contract shall come into effect on the date of signature by both parties.

**For and on behalf of the Contractor:**

Name and Title	REDACTED
Signature	REDACTED
Date	REDACTED

**For and on behalf of the Secretary of State for Defence:**

Name and Title	Michael Holloway – Log Services Commercial Head
Signature	
Date	31/07/2024

## SC2 Schedules

### Schedule 1 – Definitions

<b>Article</b>	means, in relation to clause 24 and Schedule 6 only, an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;
<b>Articles</b>	means (except in relation to Schedule 10) 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. <b>(This definition only applies when DEFCONs are added to these Conditions);</b>
<b>Authority</b>	means the Secretary of State for Defence acting on behalf of the Crown;
<b>Authority's Representative(s)</b>	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of Condition 7;
<b>Business Day</b>	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
<b>Central Government Body</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for

National Statistics:

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

**Collect**

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

**Commercial Packaging**

means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)

**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 Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;

**Consignor**

means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;

**Contract**

means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 ( Formal Amendments to the Contract);

**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.



<b>Contractor</b>	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
<b>Contractor Deliverables</b>	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;
<b>Control</b>	<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>
<b>CPET</b>	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;
<b>Crown Use</b>	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;
<b>Dangerous Goods</b>	means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under

the conditions prescribed by the:

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

**DBS Finance**

means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);

**DEFFORM**

means the MOD DEFFORM series which can be found at <https://www.kid.mod.uk>;

**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 Condition 28 and Delivered and Delivery shall be construed accordingly;

**DeliveryDate**

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;

**Denomination of Quantity (D of Q)**

means the quantity or measure by which an item of material is managed;

**Design Right(s)**

has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

<b>Diversion Order</b>	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
<b>Effective Date of Contract</b>	means the date upon which both Parties have signed the Contract;
<b>Evidence</b>	means either: a. an invoice or delivery note from the timber Contractor 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;
<b>Firm Price</b>	means a price (excluding VAT) which is not subject to variation;
<b>FLEGT</b>	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
<b>Government Furnished Assets (GFA)</b>	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
<b>Hazardous Contractor Deliverable</b>	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
<b>Independent Verification</b>	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management

standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";

**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;

**Issued Property**

means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;

**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;

**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, or any exercise of Royal Prerogative;

**Military Level Packaging (MLP)**

means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;

**Military Packager  
Approval Scheme (MPAS)**

is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);

**Military Packaging Level (MPL)**

shall have the meaning described in Def Stan 81-041 (Part 1);

<b>Mixture</b>	means a mixture or solution composed of two or more substances;
<b>MPAS Registered Organisation</b>	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
<b>NATO</b>	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
<b>Notices</b>	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Overseas</b>	shall mean non UK or foreign;
<b>Packaging</b>	<p>Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;</p> <p>Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;</p>
<b>Packaging Design Authority (PDA)</b>	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Plastic Packaging Components</b>	shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;
<b>PPT</b>	means a tax called “plastic packaging tax” charged

in accordance with Part 2 of the Finance Act 2021;

**PPT Legislation**

means the legislative provisions set out in Part 2 and Schedule 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

**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, as described in Def Stan 81-041 (Part 1);

**Publishable Performance Information**

means any of the Information in Schedule 9 (KPI Data Report) as it relates to Key Performance Indicator where it is expressed as publishable in the table in Schedule 9 which shall not contain any Information which is exempt from disclosure which shall be determined by the Authority; and which shall not constitute Sensitive Information;

**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:

- a. pre-consumer reclaimed wood and wood fibre and industrial by-products;
  - 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;

**Robust Contractor Deliverables**

shall mean Robust items as described in Def Stan 81-041 (Part 2)

**Safety Data Sheet**

has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);

**Schedule of Requirements**

means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;

**Sensitive Information**

means the Information listed in the completed Schedule 5 (Contractor's Sensitive Information), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

**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;

**Specification**

means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, and shall

include any document or item which, individually or collectively is referred to in Schedule 2 (Schedule of Requirements). The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification;

**STANAG4329**

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

**Subcontractor**

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

**Substance**

means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

**Timber and Wood-Derived Products**

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

**Transparency Information**

means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, except for (i) any Information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information;

**Virgin Timber**

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



Where project specific DEFCONs are included under Condition 45 definitions shall be in accordance with DEFCON 501.

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

## Schedule 2 – Schedule of Requirements

Item No.	Item Details	Total Qty	Price (£) Ex VAT	
			Per Item	Total Inc. packaging and Delivery**
1	<b>Specification</b> Procurement of NSNs listed within Annex A and in accordance with requirements within Annex B	N/A	As per Annex A	As per Annex A
	<b>Delivery Date</b> Lead Times per Annex A			
	<b>MOD Stock Ref. No.</b>  N/A			
	<b>Packaging requirements inc. PPQ and DofQ *</b> See Annex A			

\*as detailed in DEFFORM 96

\*\*and Delivery if specified in  
Schedule 3 (Contract Data Sheet)

**Total Price Inc. Packaging and  
Delivery \*\***

## Schedule 3 – Contract Data Sheet

<b>General Conditions</b>
<b>Condition 2 – Duration of Contract:</b>
The contract expiry date shall be 4 years from the date of signed offer and acceptance.
<b>Condition 4 – Governing Law:</b>
Contract to be governed and construed in accordance with:
English Law
Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause 4.g (if applicable) are as follows:
Not Applicable:
<b>Condition 7 – Authority's Representatives:</b>
The Authority's Representatives for the Contract are as follows:
Commercial: Annex L - DEFFORM 111
Project Manager: Annex L - DEFFORM 111
<b>Condition 18 – Notices:</b>
Notices served under the Contract shall be sent to the following address:
Authority: MOD, Elm 3c, MOD Abbey Wood Bristol BS34 8JH as per Annex L -DEFFORM 111
Contractor: Basetek, see address within offer letter.
Notices can be sent by electronic mail? Yes

**Condition 19.a – Progress Meetings:**

The Contractor shall be required to attend the following meetings:

Quarterly meetings are to take place either face to face or virtually at quarterly intervals. The Contractor is required to arrange quarterly meetings. Further information on quarterly meetings can be found at Annex B. clause 16.

**Condition 19.b – Progress Reports:**

The Contractor is required to submit the following Reports:

- KPI Reports are to be submitted by the 5<sup>th</sup> Business Day of each month, using the Template at Annex E, further information about KPI reporting can be found at clause 47.1.
- Monthly Progress Report is to be submitted by the 10<sup>th</sup> Business Day of each month. Further information about Monthly Progress Reports can be found at Annex B clause 15.
- Quarterly Reports are to be submitted 5 Business Days ahead of the Quarterly Meeting.

\_\_\_\_\_  
Reports shall be Delivered to the following address:

The Commercial Manager and Project Manager as detailed within Annex L - DEFFORM 111.

**Supply of Contractor Deliverables**

**Condition 20 – Quality Assurance:**

Is a Deliverable Quality Plan required for this Contract?

Yes, a Deliverable Quality Plan is required in accordance with DEFCON 602A (SC2)

The Deliverable Quality Plan and/or Deliverable Quality Plan with Assurance Information must be delivered to the Authority (Quality) **within 60 Business Days of Contract Award**.

Other Quality Requirements: A Deliverable Quality Plan is required in accordance with DEFCON 602A and AQAP 2105 Edition C Version 1 NATO Requirements for Quality Plans.

**Condition 21 – Marking of Contractor Deliverables:**

<p>Special Marking requirements: Refer to Annex B for further details on special markings.</p>
<p><b>Condition 24 - Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables:</b></p> <p>A completed Schedule 6 (Hazardous and Non-Hazardous Substances, Mixture or Articles Statement), and if applicable, UK REACH compliant Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>a) The Authority's Representative (Commercial)</p> <p>b) Defence Safety Authority – <a href="mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk">DESTECH-QSEPEnv-HSISMulti@mod.gov.uk</a></p> <p>to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable.</p>
<p><b>Condition 25 – Timber and Wood-Derived Products:</b></p> <p>A completed Schedule 7 (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 the Authority's Representative (Commercial)</p> <p>to be Delivered by the following date: 1 month following contract award.</p>
<p><b>Condition 26 – Certificate of Conformity:</b></p> <p>Is a Certificate of Conformity required for this Contract? Yes</p> <p>Applicable to Line Items: All line items with a QA Doc 4 or QA Doc 5 require a Certificate of Conformity.</p> <p>If required, does the Contractor Deliverables require traceability throughout the supply chain?</p> <p>Yes, all line items require supply chain traceability.</p> <p>Applicable to Line Items: All line items with a QA Doc 4 or 5.</p>
<p><b>Condition 28.b – Delivery by the Contractor:</b></p> <p>The following Line Items are to be Delivered by the Contractor:</p> <p>No line items are required to be delivered by the Contractor, unless in exceptional circumstances</p>

Authority by the Authority and pricing for delivery agreed in advance.

Special Delivery Instructions:

\_\_\_\_\_

Each consignment is to be accompanied by a DEFFORM 129J. Special Delivery Instructions:

Not Applicable

Each consignment is to be accompanied by a DEFFORM 129J.

**Condition 28.c - Collection by the Authority:**

The following Line Items are to be Collected by the Authority:

All line items are to be delivered using The Authority's Delivery Partner. All Contractors are required to set up accounts to be able to request collection of items. The relationship between the delivery partner and the Contractor is to be managed by the Contractor. It is the Contractors responsibility to ensure the delivery mechanism is set up during the contracts transition phase.

Special Delivery Instructions:

\_\_\_\_\_

Each consignment is to be accompanied by a DEFFORM 129J.

Consignor details (in accordance with Condition 28.c.(4)):

Line Items: \_\_\_\_\_ Address: \_\_\_\_\_

Line Items: \_\_\_\_\_ Address: \_\_\_\_\_

Consignee details (in accordance with condition 22):

Line Items: \_\_\_\_\_ Address: \_\_\_\_\_

Line Items: \_\_\_\_\_ Address: \_\_\_\_\_

**Condition 30 – Rejection:**

The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:

The time limit for rejection shall be 30 Business Days.

**Condition 32 – Self-to-Self Delivery:**

Self-to-Self Delivery required?    Not required.

If required, Delivery address applicable:

**Pricing and Payment**

**Condition 36 – Contract Price:**

All Schedule 2 Annex A line items shall be FIRM Price ex VAT.

Full details of each line item pricing can be found at Annex A Schedule of Requirements (SOR)

Clause 46. \_\_\_\_\_ refers

**Termination**

**Condition 42 – Termination for Convenience:**

The Notice period for terminating the Contract shall be twenty (20) days.

**Other Addresses and Other Information** *(forms and publications addresses and official use information)*

See Annex L - DEFFORM 111

## Schedule 4 – Contractor Change Procedure (i.a.w. Clause 6b)

### Authority Changes

1. The Authority shall be entitled to propose any change to the Contract (a "Change") or (subject to Clause 2) Changes in accordance with this Schedule 4.
2. Nothing in this Schedule shall operate to prevent the Authority from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

### Notice of Change

3. If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "Authority Notice of Change") on the Contractor.
4. The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clauses 7 to 9 (inclusive).
5. The Contractor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):
  - a. would, if implemented, require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable law relevant to such delivery; and/or
  - b. would, if implemented, cause any existing consent obtained by or on behalf of the Contractor in connection with their obligations under the Contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Contractor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
  - c. would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract;  
and:
  - d. the Contractor notifies the Authority within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c providing written evidence for the Contractor's reasoning on the matter; and



e. further to such notification:

- (1) either the Authority notifies the Contractor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Contractor that the Authority disputes the Contractor's notice under Clause 5.d) it is determined in accordance with Condition 40 (Dispute Resolution), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c; and
  - (2) (where the Authority either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change) to remove the Contractor's grounds for refusing to implement the relevant Change under Clauses 5.a, 5.b and/or 5.c within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after:
    - i) the date on which the Authority notifies in writing the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c); or
    - ii) the date of such determination.
6. The Contractor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

### **Contractor Change Proposal**

7. As soon as practicable, and in any event within:

- a. (where the Contractor has not notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5) fifteen (15) Business Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contract shall have received the Authority Notice of Change; or
- b. (where the Contractor has notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5 and:
  - (1) the Authority has agreed with the Contractor's conclusion so notified or it is determined under Condition 40 (Dispute Resolution) that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c and the Authority has made sufficient adjustments to the relevant Authority Notice of Change (and issued a revised Authority Notice of Change(s)) to remove the Contractor's grounds for refusing to implement the relevant Change(s) under Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contractor shall have received such revised Authority Notice of Change; or
  - (2) the Authority has disputed such conclusion and it has been determined in accordance

with Condition 40 (Dispute Resolution) that the relevant Change(s) is/are not a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date of such determination,

the Contractor shall deliver to the Authority a Contractor Change Proposal. For the avoidance of doubt, the Contractor shall not be obliged to deliver to the Authority a Contractor Change Proposal where the Contractor notifies the Authority, and the Authority agrees or it is determined further to such notification in accordance with Clause 5, that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c.

8. The Contractor Change Proposal shall comprise in respect of each and all Change(s) proposed:
  - a. the effect of the Change(s) on the Contractor's obligations under the Contract;
  - b. a detailed breakdown of any costs which result from the Change(s);
  - c. the programme for implementing the Change(s);
  - d. any amendment required to this Contract as a result of the Change(s), including, where appropriate, to the Contract Price; and
- e. such other information as the Authority may reasonably require.
9. The price for any Change(s) shall be based on the prices (including rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change(s).

### **Contractor Change Proposal – Process and Implementation**

10. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
  - a. evaluate the Contractor Change Proposal; and
  - b. where necessary, discuss with the Contractor any issues arising (and (in relation to a Change(s) proposed by the Authority) 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 shall have agreed in writing) after receipt of such modification, submit an amended Contractor Change Proposal.
11. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
  - a. either indicate its acceptance of the Change Proposal by issuing a DEFFORM10B in accordance with Condition 6 (Formal Amendments to the Contract), whereupon the Contractor shall promptly sign and return to the Authority the Contractor's DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Condition and implement the relevant Change(s) in accordance with

such proposal; or

b. serve Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such notice of change shall have no further effect).

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

13. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 11a. and then subject only to the terms of the Contractor Change proposal so accepted.

### **Contractor Changes**

14. If the Contractor wishes to propose a Change or Change(s), they shall serve a Contractor Change Proposal on the Authority. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Clauses 8 to 13 (inclusive).

Schedule 5 – Contractor's Commercially Sensitive Information Form (i.a.w. condition 12)

**Contract No:**

Contract No:
Description of Contractor's 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 6 – Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement by the Contractor

### **Data Requirements for Contract No:**

#### **Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement by the Contractor**

Contract No:

Contract Title:

Contractor:

Date of Contract:

\* To the best of our knowledge there are no hazardous Substances, Mixtures or Articles in the Contractor Deliverables to be supplied.

\* To the best of our knowledge the hazards associated with Substances, Mixtures or Articles in the Contractor Deliverables to be supplied under the Contract are identified in the Safety Data Sheets or UK REACH Communication attached in accordance with Condition 24.

Contractor's Signature:

Name:

Job Title:

Date:

\* check box (☒) as appropriate

.....  
To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Phone Number:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)

Spruce 2C, #1260  
MOD Abbey Wood (South)  
Bristol BS34 8JH

Email: [DESEngSfty-QSEPSEP-HSISMULTI@mod.gov.uk](mailto:DESEngSfty-QSEPSEP-HSISMULTI@mod.gov.uk)

## Schedule 7 – Timber and Wood – Derived Products Supplied under the Contract

### Data Requirements for Contract No:

The following information is provided in respect of condition 25 (Timber and Wood-Derived Products Supplied Under the Contract)

Schedule of Requirements item and timber product type	Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence	Volume of timber Delivered to the Authority with other evidence	Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy	Total volume of timber Delivered to the Authority under the Contract

## Schedule 8 – Acceptance Procedure (i.a.w. condition 29)

N/A

Schedule 9 – Publishable Performance Information – Key Performance Indicator Data Report (i.a.w Condition 12)

KPI Description*	Rating Thresholds	Frequency of Measurement	Quarter and Year*	Average for Reporting Period	Rating*	Comment*
The total number of Order lines ready for collection in previous month, On Time In Full (OTIF).	Good*: 90% and above.	Monthly	Quarter			
	Approaching Target: 88%					
	Requires Improvement: 87%					
	Inadequate: 86% and below					
	Good*:					
	Approaching Target:					
	Requires Improvement:					
	Inadequate:					
	Good*:					
	Approaching Target:					
	Requires Improvement:					
	Inadequate:					
Social Value KPI (if applicable)	Good*:					
	Approaching Target:					
	Requires Improvement:					
	Inadequate:					

\*Publishable fields. Please note, of the four Rating Thresholds, only the 'Good' threshold is published.  
Please see the [DEFFORM 539B Explanatory Notes](#) for guidance on completing the KPI Data Report.



## Schedule 10 – Notification of Intellectual Property Rights (IPR) Restrictions

### PART A – Notification of IPR Restrictions

1. <u>ITT / Contract Number</u>				
2. <u>ID #</u>	3. <u>Unique Technical Data Reference Number / Label</u>	4. <u>Unique Article(s)* Identification Number / Label</u>	5. <u>Statement Describing IPR Restriction</u>	6. <u>Ownership of the Intellectual Property Rights</u>
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Please continue on additional sheets where necessary.

\* Article(s), for the purpose of this form only, means part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.

### PART B – System / Product Breakdown Structure (PBS)

The Contractor should insert their PBS here. For Software, please provide a Modular Breakdown Structure

(Please see the [DEFFORM 711 Completion Notes](#) for guidance on completing the Notification of Intellectual Property Rights (IPR) Restrictions

## Annex A – Statement of Requirement

Annex A is stored on an EXCEL Spreadsheet format.

## Annex B – Statement of Support Requirements

### Introduction of Summary Requirements

- 1) The provision of a single Framework Agreement Enabling Contract for the procurement of a wide range of Maritime Consumables, Furniture and Furnishings managed by Maritime Spares (MS) in support of the Royal Navy.
- 2) This requirement concerns the provision of spares and associated services for the following items within the Maritime Consumables, Furniture and Furnishings Equipment Range:
  - a) Adhesives, Tapes and Sealant Compounds
  - b) Carpets, Mats & Tiles
  - c) Catering & Tableware
  - d) Chemicals (Excl. Janitorial)
  - e) Cleaning Hardware (Incl. Janitorial)
  - f) Cocks, Valves (Incl. Plumbing and Bathroom)
  - g) Domestic Appliances & Ancillaries
  - h) Electrical Hardware Components
  - i) Fans, Gauges, Synchro's, Meters & Test Equipment
  - j) Fasteners, Nus, Bolts, Locking/ Non-Locking Devices
  - k) Flags, Signs and Labels
  - l) Furniture. Furnishings, Mattresses, Cloths & Canvas Goods
  - m) Laboratory Equipment
  - n) Lamps & Lighting
  - o) Low Non-Mag Spares (Excl. Fasteners)
  - p) Mechanical Hardware
  - q) Mounts, Belts, Seals, Gaskets and O Rings
  - r) MS Obsolescent Items
  - s) Optical Equipment, Clocks Watches & Stateboards
  - t) Paper & Plastics (Specialist/Packaging Toilet Roll)
  - u) Patch Paints, Varnishes and Deck Coverings
  - v) Polymers
  - w) Ropes, Wires, Cables & Cordage
  - x) Wallboard and Insulation

### **Activity 1 – Service Management**

- 3) **Scope of Activity 1 – Service Management**
  - a) Service Management defines the core operational framework under which the Contractor is best able to monitor and optimise the Services provided to the Authority to ensure that they meet our Customer's requirements.
- 4) **Roles and Responsibilities of the Contractor**
  - a) The Contractor shall be fully responsible for all aspects of the Contract including management of all work resulting from Activities 1 to 3. The Contractor shall establish

and maintain the necessary technical experience and resources to define, conduct, place and manage sub-contracts covering any of the Activities.

- b) The Contractor shall nominate and maintain a permanent Project Manager (PM), who shall be in place by the date of contract award and be responsible for the conduct of business for the duration of the contract. The PM must be suitably senior in the management organisation of the Contractor, hold appropriate delegations and authorisations to ensure both Key Performance Indicators and Performance Indicators are met.
- c) The Contractor shall identify from within its' organisation key Finance, Commercial, Commodity Management, Technical and Quality Assurance (QA) personnel to act as Subject Matter Experts (SME) and to support and expedite the range of activities specified in this document. The Contractor shall identify this team of suitably qualified and experienced personnel (SQEP) and describe their respective specialist areas, roles, qualifications and experience. The key individuals shall include Single Points Of Contact (SPOC) for technical and commodity support who will also be responsible for the progressing of orders during the normal working day.

**5) Contract Deliverables – Plans**

- a) The contractor shall deliver the required plans as detailed in Annex B Conditions 24-28 to the Authority within the timeframes stated in the annex.

**6) Quality Management**

- a) The Contractor shall implement a Quality Management System (QMS) that meets at least the requirements of BS EN ISO 9001:2015 and is able to demonstrate that they have control of their processes. Quality Management (QM) is the process of ensuring that all the activities necessary to deliver a product that meets the Customers' requirements are planned and are carried out effectively and efficiently. QM is focused not only on product/service quality but also on the means to achieve it. QM therefore uses quality assurance and the control of processes as well as products to achieve more consistent quality.
- b) Annex B Condition 29,30 and 31 details the specific quality assurance activities relating to this contract.

**7) Risk Management**

- a) The Contractor acknowledges that any risk assessment, which has been, or maybe, undertaken in connection with this Contract, has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the Parties. The process of risk assessment consists generally, including without limitation, the identification of (or failure to identify);
  - i) Particular risks and their impacts; or
  - ii) Risk reduction measure, contingency plans and remedial plans shall not in any way limit or exclude the recipient's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract

and are not assumed by the result of any risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract.

**8) Safety & Environmental Management**

- a) The Authority must be made aware of any potential safety issues arising due to proposed changes/new design and should be informed of all measures required in order to limit the risk to safety and supply supporting evidence as required in order that a safety assessment/safety case can be conducted.
- b) Annex B Condition 32 and 33 – Safety & Environmental Management Functional Requirements details the specific Safety activities relating to this contract.

**9) Obsolescence Management**

- a) It is MOD policy to apply the procedures and processes within JSP 886 Volume 7 (Integrated Logistics Support) and Part 8.13 (Obsolescence Management). This requires the Authority to implement a proactive Obsolescence Management strategy unless it is clearly not cost effective to do so in accordance with IEC 62402:2019.
- b) Obsolescence Monitoring – The type and depth of monitoring and who will undertake the monitoring will depend on the Equipment, Asset or Spare, and will be jointly managed by the Contractor and the Authority. It is impractical and not economically viable to record and monitor every individual component for obsolescence. Therefore, where obsolescence monitoring is identified as a mitigation activity, the Authority will agree with the Contractor:
  - i) the level at which the monitoring will be conducted (assembly, LRU, component etc.);
  - ii) who will be doing the monitoring;
  - iii) how the monitoring will be conducted (tool, process etc.); and
  - iv) how the results will be collated and communicated (means & frequency).
- c) The Contractor shall notify the Authority the moment they become aware of any current or future supply concerns regarding materials within their planned period of use via an Obsolescence Notice Template (Annex D) which will define the issue, cause and a broad outline of what investigative work would be required to put in place a mitigation strategy.
- d) The Contractor shall resolve obsolescence issues affecting maintenance stores without seeking approval from the Authority where all the following criteria are met:
  - i) Where there is no change to material specifications;
  - ii) Where there is no impact on fit, form, function;
  - iii) Where there is no impact on safety; and
  - iv) Where there is no impact on cost to the Authority
- e) The Contractor shall notify the Authority in writing of any actions taken under Annex B Condition 9d.
- f) Mitigation strategies may include, but are not limited to:
  - i) supply an alternative part with equivalent fit-form-function;

- ii) conduct a lifetime buy of current part;
- iii) re-establishment of manufacture against the latest version of the drawings.
- iv) The Authority will review the Obsolescence Notice and advise what action to take.  
The Contractor is expected to make reasonable effort to source and offer alternative items which are as close to the original specification as possible, if a fit, form and function equivalent item cannot be sourced.
- v) Special tasking – if tasked by the Authority to seek specific requirements, the contractor shall not undertake any work unless formally tasked in accordance with the process defined under Annex B Condition 23.
- vi) In instances where the Contractor is unable to provide a suitable FFF as approved by the Authority, then the Authority reserves the right to be able to compete for a FFF item using the process detailed in Condition 47.5 of the contract.

#### **10) Configuration Management**

- a) The Contractor shall establish, document and maintain a Configuration Management system compliant with DEFSTAN 05-57 (Issue 8) which defines the configuration control processes to be followed throughout the Term of the Contract.

#### **11) Inventory Planning**

- a) The Authority will share with the Contractor on a quarterly basis, its forward inventory plan to allow the Contractor to plan his capacity (i.e. materials, tooling, workshops space, labour etc.) against the Authority's anticipated future requirements.
- b) The inventory plan is not a commitment by the Authority and provides no guarantee as to the likely level of throughput to be ordered under the Contract.

#### **12) Technical Assistance Agreements**

- a) Technical Assistance Agreements (TAAs) are key agreements established with Contractors/Original Equipment Manufacturers (OEMs) to supplement and support service delivery. TAAs are individually tailored to fit the Contractor's needs and are governed around principles, philosophy and value statement(s) mutually agreed between the Parties. TAAs or similar arrangements are to ensure that:
  - i) Safety aspects of the equipment and its operation are maintained;
  - ii) Modification data will be kept up to date;
  - iii) Advice on maintenance of the equipment is provided.
- b) The Contractor shall ensure that TAAs are established and maintained throughout the term of the Contract.

#### **13) NATO Codification**

- a) Technical data is required for all items specified in this Contract and not already in the NATO Codification System. The Contractor shall dispatch the data or arrange for dispatch of the data from sub-contractors or Contractors on request from the authority within 15 working days. The Contractor shall provide or arrange to have provided updated information regarding modifications; design or drawing changes to all items specified in this Contract in accordance with the provisions of DEFCON 117.
- b) There is maybe requirement for the Contractor to codify items using CSIS E-Tasking. Items which require codification can be either Fit, Form and Function (FFF) alternatives,

or indirect alternatives. Approval from the Authority must be sought prior to any codification action.

- c) Codification action is considered business as usual and does not fall with Special Tasking.

**14) Decision and Communications Structure**

- a) The Contractor shall produce a Communications Plan detailing the method of recording discussions and decisions between the Contractor and the Authority. The Communications Plan shall be submitted to the Authority for approval within 10 weeks of the date of contract award. The Contractor shall maintain this document throughout the duration of the Contract.

**15) Performance Management**

- a) Performance management is a critical activity that will be used to evaluate the Contractor's performance. It will also generate information used by the Authority to monitor and maintain the availability of systems and equipment's across the business. Therefore, timely and accurate performance management information will be critical in supporting the outputs under this Contract.
- b) A Performance Indicator (PI) will also be used to measure quality under Activity 1.
- c) Performance and Financial Reporting - To enable the Contractor and the Authority to monitor both performance and financial activity, the Contractor shall provide a Monthly Progress Report. Progress Reports shall be submitted within 10 working days after the end of each month covering the preceding calendar month. Monthly Progress Reports shall be issued in an electronic format for use with Microsoft Office Suite applications.
- d) The monthly Progress Report shall include but not be limited to:
  - i) A statement on the status of all orders, identifying any current or perceived problems and actions intended to resolve or mitigate these.
  - ii) For each relevant Activity: details of and progress on orders placed in the reporting period; to include, items and quantities ordered by NSN, prices invoiced, monthly and cumulative value of orders received.
  - iii) For each relevant Activity: details of and progress on deliveries due in the reporting period; to include where delivery took longer than contracted, when delivery was made and reason for delay.
  - iv) For each relevant Activity: delivery forecasts for those deliveries expected to be missed in the next reporting period and the reasons for the delay;
  - v) In respect of each Activity: A summary of all identified residual risks, risks resolved, solutions proposed and adopted.
  - vi) Details of parts where obsolescence issues have arisen, covering details of parts affected and potential options for continued support.
  - vii) A review of safety related issues, with mitigation and resolution proposals.
  - viii) Defective material/non-conformances.



ix) A graphical representation and numerical report of:

- (a) The Authorities spend profile against each Activity (any further possible breakdowns to be agreed during contract startup) including spend each line and against the Contract overall (figures to be ex VAT).
- (b) Progress on any demands made by the Authority for the supply of non-patternised items.
- (c) Opportunities identified within the supply chain to improve reliability of the Asset(s) or reduce lead times.

**16) Project Review Meetings**

- a) A joint Project Review meeting covering performance and financial matters will be held between the Contractor and the Authority at quarterly intervals after an initial startup meeting within 3 weeks of contract acceptance. Further interim meetings can be called by any party. Secretarial services will be provided by the Contractor. The Contractor will be responsible for drafting the agenda for all Project Review meetings and submitting it for agreement to the Authority 5 working days prior to all Project Review meetings. The Contractor will be responsible for drafting the Minutes of each Project Review meeting and shall be submitted to the Authority for approval within 5 working days following the meeting being held. The Project Review meeting will be chaired by the Authority and held at the Contractor's premises and Abbey Wood on an alternate basis, unless mutually agreed otherwise.
- b) The Project Review meeting shall address, but not be limited to, the issues captured within the monthly Progress Report.

**17) Transition to a New Contractor**

- a) One month prior to the Contract completion date, or contract termination, the Contractor shall ensure that copies of all items including, but not limited to source data, software files and data-bases which contain information generated and used in support of the Contract, are available for delivery to a successor contractor. If a successor Contractor is nominated, there will be a hand-over period during which the Contractor shall complete current work and the successor Contractor shall commence new work. The Contractor shall be required to liaise with the successor Contractor during this period, the duration of which will depend on the amount of current work but shall not exceed the period stated in the Contract Conditions.

**Activity 2 – Supply Support**

**18) Scope of Activity 2 - Supply of Stock**

- a) 'Supply Support' means the manufacture, procurement or the supply of Articles.

**19) Supply of Stock**

- a) The Contractor shall be required to supply Articles when demanded by the Authority in order to mitigate the risks to Equipment availability arising from routine maintenance and unforeseen in-service failures.

- b) The Contractor shall be required to price and supply the Article(s) listed in Annex A in accordance with Annex B.
- c) The Codification Support Information System (CSIS) provides a range of services to support NATO Codification. These include the CSIS Search Tool, Codification Requests, Post-Codification Queries, NATO Codification and NCAGE Maintenance. The CSIS Search Tool provides read-only access to data held within the Codification Support Information System (CSIS).
- d) The Contractor is required to source items listed in Annex A using CSIS item information (NSN search) to identify associated characteristics, Contractor information and already recorded part numbers from OEMs and/or distributors. For items where CSIS item data records are incomplete, the Authority should be contacted for further guidance. Where there is an apparent conflict in description between CSIS and CRISP, CSIS is considered to be the authoritative reference.
- e) The Contractor shall be required to supply articles which may contain Lithium Ion Cells. The Dangerous Goods Regulations stipulate that for any articles containing Lithium-ion Cells (except for button cells installed in equipment including circuit board), manufacturers and subsequent distributors of cells and batteries manufactured after 30 June 2003 shall make available the test summary as specified in the Manual Tests and Criteria, Part III, sub-section 38.3, paragraph 38.3.5. for each NSN affected. These reports are to be copied and stored within the articles packaging so that the documents are accessible throughout life to Stores and the distribution services to the Ultimate consignees. A copy is also to be supplied to the authority for version control/compliance.

References:

ADR: 2.2.9.1.7 (g)

IMDG: 2.9.4 (.7)

IATA: 3.9.2.6.1 (g)

- f) There may be a requirement to add similar scope codified Articles not already within Annex A. In these instances, the process detailed within Condition 47.5 of the contract will be followed.
- g) There will be a requirement to review the obsolescence Notice of Articles. These Articles have either been declared obsolescent, Contractor no longer trading or reference data obsolescent. The Contractor shall carry out a review of each article to confirm its status: (available/obsolescent/obsolete), detail actions to reinstate availability or deletion and/or source a suitable, technically compliant Fit, Form and Function replacement(s) or offer a replacement(s) which is as close to the original CSIS specification as possible.
- h) The Authority, upon review of Annex D will confirm codification (if required) and will draft and an offer of contract amendment. The Authority, on formal acceptance of the data will then supply an appropriate Order.

- i) The Contractor has scope to identify alternative sources for supply of Articles but the Authority must be informed immediately if there is any change in Form, Fit or Function or if the Article's technical specification differs from that on CSIS, or as a result of anything of a novel or contentious nature. The Contractor shall seek formal approval from the Authority using the contacts listed in DEFFORM 111 prior to fulfilling Supply.

**20) The Ordering Process**

- a) Order(s) shall be placed by the Authority using the MODs Electronic Purchasing System. Each Order will include a system generated Order Number used for Invoicing, an NSN, Description, Quantity and Delivery Date required as a minimum. Each Order should be electronically acknowledged so that any future amendments if required can be received.
- b) The lead times stated against each item will commence upon issue of the Order by the Authority **not** on receipt of order by the Contractor. The lead times for each article from issue of Order up to the date of delivery to the Authority, or its nominated agent, are contractually agreed and shall not be exceeded unless agreed by the Authority and confirmed IAW Annex B Condition 20c.
- c) Should the Authority require any amendment to an acknowledged Order, the Authority shall use an amendment to the Order via the ePurchasing System to notify the Contractor accordingly. The Order Revision shall constitute a formal amendment to the Order. In the event of a partial or total cancellation, the Authority may be liable to pay reasonable cancellation costs incurred by the Contractor, subject to a limit of the value of the original requirement. The Contractor shall provide the Authority with a full breakdown of these costs within 20 working days from receipt of the Order Revision. In these instances, any associated articles that are complete, part built, and/or parts that have been procured to meet the cancelled/amended Order should be vested in the Authority to meet future requirements. Details of the Articles and/or parts consigned shall be provided to the Authority at the same time as the Contractor's breakdown of costs.
- d) Where packaging standards are increased above the level defined within the Original Order, the Contractor shall submit a Firm Price quotation for any additional cost incurred to meet the new packaging standards before delivery and within 5 working days from receipt of any Order. No additional work beyond the original agreed Order shall begin until the Authority has authorised any additional costs.
- e) When circumstances require the Article(s) to be diverted from the original Purchase Order consignment address direct to a Customer or to Purple Gate, the Authority shall notify the Contractor via email and confirm the electronic Order's "Note to Contractor" field if applicable. In the event that this requires the Contractor to deliver the items in accordance with Condition 28 then the Contractor shall submit a Firm Price quotation for any additional cost incurred prior to receipt of the amended Order for the Authorities agreement. No additional work beyond the original agreed Order shall begin until the Authority has authorised any additional costs.
- f) The Contractor shall dispatch Article(s) to the Consignee address detailed within the Order in accordance with DEFCONs 5J, and condition 22 of the contract.
- g) Contractors should be able to provide proof of collection and delivery by showing a signed Delivery Note containing the Invoice Number, package details, the URRI, NSN quantity and Naval Base.
- h) Information on a Delivery Note should follow the requirements stated in DEFCON 5J.

- i) Where the Authority deems the Delivery Note insufficient, either a signed Proof of Delivery (by the receiver at the base stating the Stock is delivered) or a signed Proof of Collection by the Driver for the transport must be presented by the Supplier. The Proof of Delivery and/or Proof of Collection must include a signature, a printed name and a date.
- j) On the delivery note, where items are delivered, the URRI must end in a suffix of A if the consignment is whole, if partial delivery occurs, additional suffix letters should be added to the end of the URRI for each additional part of the delivery. It should be noted that payment of the first part delivery will be made provided that invoices for the rest of the delivery are not submitted. Where the full amount of the order has been invoiced, the full payment will not be made until the full quantity has been receipted.
- k) The Contractor shall supply articles to the specification and part number identified within the characteristics of the NATO Stock Number and CSIS description. The Contractor shall check the latest drawing issue state (using CSIS) and if different to that identified the Contractor is to notify the Authority to confirm the requirement. Where such specifications cannot be met, then the Contractor shall propose an alternative article.
- l) Where the Authority places an order for an article that has a shelf life then the Contractor shall ensure that the article has a minimum of 11/12ths of its shelf life remaining from the date of dispatch to the Authority or as agreed by the Authority if differing.

### **Activity 3 -Technical Services**

#### **21) Scope of Work – Technical Services**

- a) The Contractor shall provide when tasked by the Authority, Technical Services (TS) within the scope of the definitions in this Activity, to afford for continuing availability.
- b) The Contractor shall provide Suitably Qualified and Experienced Personnel (SQEP) to carry out any such tasks authorised by the Authority. As far as is practicable, the Contractor should seek to ensure that the personnel deployed on a task remain the same throughout the period of that task.

#### **22) Technical Services**

- a) The Contractor may, as tasked, be required to support the following TS type activities:
  - i) Obsolescence - To investigate component obsolescence and source appropriate replacement items to accommodate changes with minimal disruption to existing equipment and without compromising safety, system operation or functionality without the approval of the Authority.
  - ii) Integrated Logistics Support – To provide support for the development of ILS packages including technical publications.
  - iii) Safety Assessments – To assist with and/or participate in safety assessments, hazard assessments and the generation of the relevant safety case in accordance with JSP 430 and DEFSTAN 00-56 (Issue 4). The Contractor may be required to support a safety case for any new-to-service equipment.

#### **23) The Tasking Process**

- a) Tasks will be initiated by means of a formal Task Approval Form (TAF) a copy of which is enclosed as Annex C and consists of three parts:

- i) Part A: Proposal – sets out the Authority's requirements and outputs of the task;
  - ii) Part B/B1: Proposition – sets out the Contractor's solution, associated costs (inclusive of cost breakdown and profit rate) and overall FIRM price for the task;
  - iii) Part C: Internal Approvals – captures the internal approval of the task allowing formal authorisation to proceed.
  - iv) Part D: Completion – captures and records the Contractors confirmation that all work and deliverables have been satisfied.
- 
- b) Each task will be allocated a unique and sequential reference number. Issue numbers will only vary where the TAF has been subjected to a duly approved amendment to the task.
  - c) On receipt of a TAF with completed Part A, the Contractor shall complete Parts B and B1 and return it to the Authority within the timescale stated in the TAF. The Contractor's Firm Price quotation shall be broken down under the headings specified in the TAF at Part B1.
  - d) Where the task, by exception, requires the Contractor to procure Assets or Spares, for example in support of a modification activity, the Contractor shall confirm that such costs have been secured competitively or where this has not been possible shall justify within their proposition as to the reasons why.
  - e) Other than for those reasons set out at Annex B Condition 23h below, the Authority shall in no way be liable for any costs incurred by the Contractor until such time as formal approval of the task and the agreement of costs have been provided by the Authority.
  - f) Upon approval by the Authority at Part C, the Authority shall raise a Standard Purchase Order (SPO) which will be sent to the Contractor as the approval to commence work and enable payment upon the satisfactory conclusion of the task.
  - g) Upon satisfactory completion of all activities authorised under the TAF, the Contractor shall complete Part D (Task Closure) and forward to the Authority for agreement. Following receipt by the Contractor of Part D signed by the Authority, the Contractor shall claim payment by raising an electronic invoice in accordance with Condition 36 of the contract.
  - h) In exceptional circumstances which requires the Contractor to operate at very short notice, for example over the course of a weekend, where it is not possible to fully prosecute the above process and agree a Firm Price in advance, authorisation for work to proceed may be given by the Authority Project Manager by email or, if outside normal hours, by telephone with an email confirmation on the very next working day. Such authorisations will include a Limit of Liability equating to a provisional price for the purposes of pricing under DEFCON 127 which, in any case, shall not exceed an equivalence of 48 man-hours plus any directly associated travel and subsistence costs.
  - i) All tasks will be subject to the terms and conditions of the Framework agreement.

## 24) **Applicable Standards**

<b>Reference</b>	<b>Title</b>
AQAP-2105:2019	NATO Requirements for Deliverable Quality Plans
AQAP 2070	Edition B version 4
BS CECC 00015 Pt 1 1991	Handling of Electrostatic Devices
BS EN ISO 9001:2015	Quality Management Systems
BS EN 61340-5-1:2016	Protection of Electronic Devices from Electrostatic Phenomena - General Requirements
BS EN 62402:2019	Obsolescence Management - Application Guide
Defence Standard 00- 52	The General Requirements for Product Acceptance and Maintenance Test Specifications and Test Schedules
Defence Standard 05- 57	Configuration of Defence Materiel
Defence Standard 05- 61	Quality Assurance Procedural Requirements - Concessions
Defence Standard 02- 129	Requirements for Soft Furnishings and Fabrics
Defence Standard 02- 135	Avoidance of Counterfeit Materiel
Defence Standard 02- 137	Requirements for Urethane Foam Components for Mattresses, Cushions and Upholstery
Defence Standard 02- 184	Requirements for Master Decor Scheme of Accommodation Areas in Surface Ships and Submarines
Defence Standard 02- 128	Furniture and Associated Equipment Requirements for HM Ships

Defence Standard 02-727	Guide to the Design and manufacture of the Awnings and Associated Screens and Covers
Defence Standard 02-165	Requirements for Spring Interior Mattresses for use in Surface Ships and Submarines
Defence Standard 81-041	Packaging of Defence Materiel
JSP 515	Hazardous Stores Information Service
JSP 800	Defence Movements and Transport Policy
JSP 886	The Defence Logistics Support Chain Manual
JSP 892	Risk Management
TD-76-0543-003 Dec 14	Defence Technical Documentation Guidance

**25) Project Management Plan**

- a) The Contractor shall deliver a Project Management Plan (PMP) to the Authority for approval within four weeks of the date of contract award. The PMP shall incorporate all Activities under the Contract. The PMP shall reflect the three-year programme of work. The Contractor shall produce and maintain documented processes and procedures within the PMP for the management of each Activity including all subcontract and delivery procedures covering the entire commodity range.
- b) The PMP shall include, but not be limited to:
  - i) Needs & Objectives;
  - ii) Assumptions;
  - iii) Top level Activities, tasks and plans;
  - iv) Statement regarding Project Manager's contractual delegations/authorisations;
  - v) Description of activity packages;
  - vi) Project milestones;
  - vii) Control systems and processes;
  - viii) Configuration Management;
  - ix) Transition Management;
  - x) Exit Management;
  - xi) Quality Assurance;
  - xii) Organisation;
  - xiii) Processes;
  - xiv) Audits and verification activities to ensure compliance with the Contract;
  - xv) Project management and decision structure and responsibilities;
  - xvi) Project team;
  - xvii) Reference to associate Management Plans.



- c) The PMP shall be a 'live' document, updated by the Contractor as necessary throughout the duration of the Contract but particularly prior to each Progress Meeting, to show proposals and details of all activities necessary to meet the requirements of the Contract.
- d) 1.3. The PMP shall also include details of how it is intended to implement, maintain and review transition from the Authority's current contractual arrangements in order to ensure there is no loss of service.

**26) Risk Management Plan**

- a) The Contractor shall deliver, maintain and implement a Risk Management Plan (RMP), compliant with JSP 892, which shall describe how risks will be controlled during the term of this Contract. The RMP will detail the top-level approach to be taken for risk management, through all aspects of the conduct of the Contract and be compatible and be assessed against the DES Risk Maturity Model in accordance with the Acquisition System Guidance (ASG) requirements.
- b) The RMP shall include, but not be limited to, the following:
  - i) description of the Contractor's proposed risk management organisation, including subcontractors;
  - ii) the definition, categorisation and classification of risks;
  - iii) early identification of risk;
  - iv) a procedure for the management of residual risk and for ensuring that new potential risks are identified as they arise; and
  - v) a risk reporting procedure.
- c) Draft updates shall be submitted to the Authority monthly except where the RMP remains unchanged. All updates will be agreed with the Authority and issued within 20 working days of submission to the Authority.
- d) The RMP shall be delivered to the Authority for approval no later than six weeks following the date of contract award.

**27) Risk Register**

- a) The Contractor shall deliver a Risk Register that includes all joint Authority/Contractor risks, including updates to risks, that impact upon the scope of the Contract.
- b) The Contractor shall identify to the Authority all recognised risks which impact upon the Contract within twenty working days of identification, regardless of whether he is responsible for taking mitigation action. These are to be identified on the Risk Register.
- c) The RMP will subsume risks identified in the PMP and will include risks sub-let by the Contractor to their Contractors, sub-contractors and partners. The Contractor shall propose options to mitigate risks and document them in the Risk Register. Decisions on the mitigation measures proposed to be implemented will be developed by the Contractor and agreed with the Authority.

**28) Transition Management**

- a) The Contractor shall produce a contract Transition Management Plan. This document shall be submitted to the Authority for approval within 2 weeks of the date of contract

award. The plan shall include a programme of systematic reviews, audits and verification activities necessary to ensure implementation of and compliance with the requirements of the Contract.

**29) Quality Assurance**

- a) When called up in standards invoked by this Contract, Quality Assurance Representative (QAR) is to read as Government Quality Assurance Representative (GQAR and /or Acquirer). The GQAR for this contract is DES SHIPS-MPS-QA2. Only MOD GQAR organisations or individuals that have been assessed, registered and authorised by the Defence Quality Assurance Authority (DQAA) can conduct Government Quality Assurance Surveillance (GQAS) on behalf of the MoD or overseas Governments.

**30) Quality Plan**

- a) The Contractor is required to provide a Quality Plan to the Authority no later than **60 business days** following contract award.
- b) The Contractor shall implement and maintain a Contract specific deliverable Quality Plan (QP) in accordance with the requirements of Allied Quality Assurance Procedure (AQAP) 2105. The QP shall address two complementary roles:
  - i) It will describe and document the Contract specific QMS requirements necessary to satisfy the Contract requirements; and
  - ii) It will describe and document the planning of product realisation in terms of quality requirements for the product, needed resources, required control activities (verification, validation, monitoring, inspection and testing) and acceptance criteria
- c) The QP shall address all areas of AQAP 2105 but describe in detail:
  - i) Staff directly involved with QA (AQAP 2105 Sect. 4.4);
  - ii) Planning and control procedures for product realisation (AQAP 2105 Sect 4.7.1);
  - iii) Planning and control of design (AQAP 2105 Sect. 4.7.3);
  - iv) Configuration management control including application for concessions (AQAP 2105 Sect 4.7.7);
  - v) Purchasing including control of sub-Contractors and 'flow down' of prime contract conditions (AQAP 2105 Sect. 4.7.4);
  - vi) Records of Contract/management review carried out both within the Company and with all sub-Contractors (AQAP 2110 Sect. 5.6);
  - vii) Control of non-conforming product including corrective and preventative action (AQAP 2105 Sect. 4.8.4); and
  - viii) Monitoring and measurement of Customer satisfaction (AQAP 2105 Sect. 4.8.1).

**31) Concessions**

- a) The Contractor shall supply Articles to the specification identified within the characteristics of the NATO Stock Number (NSN). The Contractor shall establish the latest drawing issue state and, where different to that identified by the NSN, notify the Authority to confirm the requirement. Should the Contractor wish to deliver a product to the Authority that does not comply in full with contract requirements a request for concession must be raised in accordance with the requirements of DEFSTAN 05-61 (Part 1) (Issue 3). The request for concession shall include full and comprehensive details of the variation from the Specified Article, the impact on the safety of the

equipment, the changes in the cost and shall indicate the benefits to the Authority of its acceptance. Requests for concession shall be submitted to the Authority's designated Quality Assurance Focal Point (QAFF).

- b) The Contractor shall supply Articles to the specification identified within the characteristics of the NATO Stock Number (NSN). The Contractor shall establish the latest drawing issue state and, where different to that identified by the NSN, notify the Authority to confirm the requirement. Should the Contractor wish to deliver a product to the Authority that does not comply in full with contract requirements a request for concession must be raised in accordance with the requirements of DEFSTAN 05-61 (Part 1) (Issue 3). The request for concession shall include full and comprehensive details of the variation from the Specified Article, the impact on the safety of the equipment, the changes in the cost and shall indicate the benefits to the Authority of its acceptance. Requests for concession shall be submitted to the Authority's designated Quality Assurance Focal Point (QAFF).
- c) The Contractor is responsible for processing concession applications from their sub-contractors; this responsibility is to be flowed down to all levels of the supply chain. If the prime Contractor identifies that the application pertains to a major non-conformance, the Contractor must submit it to the Authority for a final decision. If the sub-contractor is the equipment Design Authority, the sub-contractor must indicate their support by endorsement of the concession application form. When the Authority has made a decision, the concession form is returned to the Contractor who will forward it to the sub-contractor.
- d) The Contractor is required to ensure suitable arrangements are in place with sub-contractors for the processing of major and minor non-conformances. The Authority may consider using the services of the Government Quality Assurance Representative (GQAR) to ensure that the sub-contractor controls exercised by the Contractor are effective.

## **Safety & Environmental Management**

### **32) Control of Hazardous Articles and Substances**

- a) Notwithstanding his obligations under the Health and Safety at Work Act 1974 and any other statutory requirements, throughout the duration of the Contract the Contractor shall provide the Authority with full written information concerning every Article or substance which is hazardous or a risk to health and which is to be supplied in its own right or incorporated into or supplied with Article(s), including the Contractor's proposals for the safe and controlled disposal of every Article or substance which is hazardous or a risk to health.
- b) The information required shall be provided in the form of a Safety Data Sheet in accordance with Schedule 6 (Supply of Hazard Data for Articles, Materials and Substances) which the Contractor shall complete and forward to the Authority.
- c) Where a Safety Data Sheet has been produced in relation to a specific Article, a copy of the Safety Data Sheet shall also accompany each such Article delivered under the Contract.
- d) The Contractor shall ensure that these provisions are included in any Contracts let with his supply chain.

**33) Montreal Protocol Substances**

- a) The Contractor has provided an initial return in relation to Montreal Protocol Substances. If, at any time, in relation to work under the Contract, the Contractor becomes aware that he may need to use a Montreal Protocol listed substance that he has not hitherto notified to the Authority, he shall, before proceeding with that work, so advise the Authority giving details of an such occurrence.
- b) The Authority reserves the right, throughout the duration of the Contract, to amend the list of substances on which the Contractor is required to make such a return, to align with changes in legislation including Protocols and / or any other form of obligation by which the Authority may be bound or choose to bind itself.
- c) No additional cost shall be incurred by the Authority as a result of the Contractor's obligations under this Condition.

**Logistics Support**

**34) Packaging, Handling, Storage and Distribution**

- a) The Contractor shall ensure any packaging Solution meets the packaging standards as laid down in DEFSTAN 81-41, Parts 1-5 (Packaging of Defence Materiel and JSP 886 (The Defence Logistics Support Chain Manual).
- b) The Contractor will be responsible for ensuring the correct standard of packaging is selected that will make certain the Article reaches the customer in a serviceable condition. Commercial Retail Packaging is the anticipated specification.
- c) The Contractor will ensure that all spares/components designed to be handled manually must meet the Health and Safety Manual Handling Regulations.

**35) Packaging**

- a) The Contractor shall comply with the requirements of DEFSTAN 81-41 (Parts 1 to 5) in respect of the packaging of Articles. Where an Article requires a Military level of packaging, such Articles shall be identified through the packaging code on the Purchase Order. The relevant packaging codes are:

Packaging Code	Packaging Level
05	UK Level J
06	UK Level N
07	UK Level P
08	Retail Trade Pack

- b) The Contractor shall either maintain Military Packager Approval Scheme (MPAS) certification /registration for the Term of this Contract or shall sub-contract such services

to an MPAS certified / registered Company against the requirements set out for the design of Military level packaging in accordance with Condition 22 of the contract.

- c) The Contractor shall notify the Authority if there is any change in the packaging authority or MPAS certification/registration during the Term of this Contract.
- d) It is MOD policy to provide protection for all electronic equipment deemed to be at risk from electrostatic discharge. The requirements for such protection are stated in BS EN 61340-5-1:2016 (Basic Specification for Protection of Electrostatic Sensitive Devices).
- e) Where static sensitive devices or assemblies are known to be or are suspected to be sensitive to static generated voltages, such Articles shall at all times be handled, identified and packed in accordance with the requirements of BS EN61340-5-1:2016 (Basic Specification for Protection of Electrostatic Sensitive Devices).
- f) Contractors engaged in the design, production, servicing and packaging of equipment containing such Electrostatic Sensitive Devices are to provide adequate measures for protection. The Contractor shall ensure that similar facilities are also to be provided when their employees carry out work at a Government Establishment.

**36) Storage**

- a) The Contractor shall identify Articles that either require special storage requirements or have a shelf life. Details are to be clearly displayed on the packaging.
- b) Where the Authority places an Order for an Article that has a shelf life then the Contractor shall ensure that the Article has a minimum of 11/12ths of its shelf life remaining on the date of dispatch to the Authority.
- c) The Contractor shall advise what in store maintenance is required for Articles and the periodicity.

**37) Distribution**

- a) The Article(s) shall be delivered on an ex-works basis. The Consignee shall be identified on the Purchase Order.

**38) Specifications Covering Identification, Marking and Age on Delivery of Rubber Materiel, Assemblies and Rubber Containing Composites**  
**General Conditions**

- a) The conditions of the following standards are to apply to the Articles ordered against this Contract, where they are not covered by a specific procurement specification, production drawings or similar requirement stated in the Contract:
  - i) British Standard 5244 - "Recommendations for application, storage and life expiry of hydraulic rubber.
  - ii) BS ISO 2230:2018 - Rubber Products. Guidelines for storage.
  - iii) Def Stan 81-055 Issue 8: Packaging of rubber hoses, plastics hoses and hose assemblies
  - iv) Defence Standard 02-345 Issue 3: "Requirements for flexible Rubber Pipe assemblies and Bellows for use in systems from Vacuum to 20 Bar".
  - v) Defence Standard 81-055 Issue 8: "Packaging of gaskets, seals 'O' Rings, grommets and similar material". [Level P Package [Equivalent to NATO Level 4] requirements of Defence Standard 81-60].

- b) **Age of Rubber** used in the manufacture of rubber composites and assemblies, i.e. flexible rubber hoses, hose assemblies and bellows. Because of the Shelf Life Limitation related to items wholly or partially composed of rubber, it is a requirement that at the time of manufacture, the rubber used must be the most recently cured obtainable. The despatch date of the manufactured Article should not normally be later than 12 months from the cure date. **The Authority reserves the right to reject any item manufactured where the cure date of the rubber element exceeds 12 months prior to the date of despatch.** Where more than one cure date is present then sentence shall be based on the oldest cure date. Where items are offered ex-stock the cure date of the rubber shall be notified to the Equipment Manager. The agreement of the Equipment Manager shall be obtained prior to the supply of any item where the cure date of that item is more than 12 months previous. Def Stan 05-61 (Pt 1) Issue 7 (Concessions)
- c) **Age of Rubber on Delivery** where the rubber item is produced by a single manufacturing process. Because of shelf life limitations imposed on store holders, it is a requirement that the maximum possible initial storage life be available on receipt. Accordingly, no item shall be delivered where the cure date is more than six months prior to receipt at MOD Stores Depot (where the specification calls for marking as quarter and year, then not more than one full quarter may be elapsed). The Authority reserves the right to reject any Article manufactured where the cure date exceeds six months prior to date of despatch. Items Offered Ex Stock - Where items are offered ex-stock, the cure date of the rubber shall be notified to the Equipment Manager stated in the Contract. The agreement of the Equipment Manager shall be obtained prior to the supply of any item where the cure date of the item is more than 6 months previous. DEF Stan 05-61 (Part 1) Issue 7 (Concessions).

## Annex C – Task Approval Form

### Part A -PROPOSAL (to be completed by MOD Task Sponsor)

CONTRACT No.	TAF No.	ISSUE No.
<p><i>The Tasking Authorities of the Project Support Management Branches are detailed in the Annex to the Contract. Work shall not begin before there is agreement on the price of performing it and approval has been provided by the Authority by means of a Standard Purchase Order (SPO) on P2P. Subject to the below Conditions; the Terms and Conditions of Contract LSMS012 shall apply to this order.</i></p>		

CONTRACTOR	TASK TITLE
ACTIVITY	

<input type="checkbox"/> <b>Post Design Services</b>	<input type="checkbox"/> <b>Technical Services</b>
<b>CONDITIONS</b>	
<input type="checkbox"/> DEFCON 14 (11/22) – Inventions and Design Crown Rights and Ownership of Patents and Registered Designs <input type="checkbox"/> DEFCON 82 (SC2) (06/21) – Special Procedures for Initial Spares <input type="checkbox"/> DEFCON 117 (SC2) (07/21) – Supply of Information for NATO Codification and Defence Inventory Introduction <input type="checkbox"/> DEFCON 707 (10/23) – Rights in Technical Data	
<b>DELIVERABLES</b>	
<input type="checkbox"/> Delivery Completion Report <input type="checkbox"/> Instrument Calibration Certificate <input type="checkbox"/> DEFFORM 315 (12/98) – Contract Data Requirement <input type="checkbox"/> DEFFORM 316 (05/98) – Government Furnished Information <input type="checkbox"/> DEFFORM 12 (12/13) – Certificate of Attendance of Contractors Personnel	

<b>INTRODUCTION/BACKGROUND</b>
<b>OUTPUT</b>

<i>ADDITIONAL QUALITY REQUIREMENTS AND STANDARDS</i>			
<i>TASK COMPLETION DATE</i>		<i>QUOTATION DUE DATE</i>	
<i>EQUIPMENT PROJECT MANAGER ENDORSEMENT</i>			
<b>Signed</b>	<b>Name</b>	<b>Post</b>	<b>Date</b>
<i>QUALITY ASSURANCE ENDORSEMENT</i>			
<b>Signed</b>	<b>Name</b>	<b>Post</b>	<b>Date</b>
<i>COMMERCIAL ASSURANCE ENDORSEMENT</i>			
<b>Signed</b>	<b>Name</b>	<b>Post</b>	<b>Date</b>

**Part B- RESPONSE (to be completed by Contractor)**

<i>CONTRACT No.</i>	<b>TAF No.</b>	<b>ISSUE No.</b>
<i>PROPOSED SOLUTION</i>		
		£



TOTAL FIRM PRICE FOR THE TASK APPROVAL FORM (Materials + Labour + Subsistence + Travel + Profit)	FIRM PRICE
	£

<b>VALIDITY OF QUOTATION</b>	Days
------------------------------	------

OVERSEAS EXPENDITURE (is to be detailed separately in accordance with DEFCON 528)			
Signed for Company	Name	Position	Date

**A SEPARATE PART B1 BREAKDOWN IS TO BE COMPLETED FOR EACH ITEM LISTED AT PART B**

<i>GRADE OF STAFF</i>	<b>NUMBER OF MAN HOURS/DAYS</b> (Please specify)	<b>RATE</b>	<i>FIRM PRICE</i>
-----------------------	---	-------------	-------------------

			£
			£
			£
			£
TOTAL LABOUR COSTS			£
<i>SUBSISTENCE</i>			

<i>ELEMENT</i> (e.g. Overnight)	NUMBER OF PERSONNEL	RATE	FIRM PRICE
------------------------------------	---------------------	------	------------

			£
			£
TOTAL SUBSISTENCE COSTS			£
<i>TRAVEL</i>			

<i>ELEMENT</i>	NUMBER OF MILES/FARES	RATE	FIRM PRICE
----------------	-----------------------	------	------------

<i>MILEAGE</i>			£
<i>OTHER (Specify)</i>			£
TOTAL TRAVEL COSTS			£

<i>TOTAL FIRM PRICE FOR THIS ITEM ON THE TASK APPROVAL FORM</i> (Materials + Labour + Subsistence + Travel)	FIRM PRICE
--	------------

	£
--	---

**Part C Internal -Ministry Approvals**

<i>CONTRACT No.</i>		<b>TAF No.</b>	<b>ISSUE No.</b>
<b>TECHNICAL APPROVAL</b> <i>(to be completed by the Project Manager)</i>  It is confirmed that the Man-hours and Materials quoted at Part B are considered to be commensurate with the requirement specified at Part A and therefore recommended for acceptance.			
<b>Signed</b>	<b>Name</b>	<b>Post</b>	<b>Date</b>
<b>FINANCIAL APPROVAL</b> It is confirmed that finance as detailed below is available and that financial approval is hereby given.			
<b>Signed</b>	<b>Name</b>	<b>Post</b>	<b>Date</b>
<b>COMMERCIAL APPROVAL</b> It is confirmed that work detailed is within scope of Contract and commensurate with the Contract terms and conditions. Authorisation to proceed with the task shall be issued via SPO on P2P.			
<b>Signed</b>	<b>Name</b>	<b>Post</b>	<b>Date</b>

Item Number	RAC	UIN	CPV	VAT	£

<b>SPO No:</b>	
----------------	--

## Annex D – Obsolescence Notice

Type of equipment	
NSN	
Issue	
Cause	
Broad outline of investigative work required to put in place mitigation strategy	
Additional information required for repairs only	
Revised timescale to complete repair	
Revised actual cost to complete repair (breakdown of cost to be detailed below)	
Breakdown of additional costs	
NAME	
SIGNATURE	
POSITION/GRADE	
DATE	

## Annex E – KPI Monthly Report Template

### **MCF KPI Report - [Contractor Name] – [Insert MM/YY]**

*Monthly Summary:*

Key	
Green	>90%
Amber	>90-<87%
Red	<86%

To be completed by the Contractor			
KPI 1 Measure: Lead Time	[INSERT MONTH AND YEAR]	[INSERT MONTH AND YEAR]	[INSERT MONTH AND YEAR]
Pre mitigation Score (%)			
No. Orders due in month			
No. of Orders delivered OTIF			
No. of Orders Late			
No. of Mitigations requested			
Service Credits			
Running Quarterly Service Credit Value			
Summary on Mitigations (to be further supported by the Order Book):			

<i>To be completed by the Authority</i>			
<b>KPI 1 Measure: Lead Time</b>	<b>[INSERT MONTH AND YEAR]</b>	<b>[INSERT MONTH AND YEAR]</b>	<b>[INSERT MONTH AND YEAR]</b>
No. Orders due in month			
No. of Orders delivered OTIF			
No. of mitigations accepted			
Post mitigation Score (%)			
<b>Service Credits</b>			
<b>Running Quarterly Service Credit Value</b>			

*Remediation Plan Progress: (to only be completed when a remediation plan is still active for the reporting month)*

*Additional Comments:*

## Annex F – Invitation to Compete

You are invited to compete for the NSN(s) detailed below under the Terms and Conditions of this Framework Agreement LSMS/012, in accordance with the ITC process detailed at Special Conditions 47.5, 47.6, 47.7, 47.8, 47.9 of this Framework Agreement.

REQUIREMENT				
Full NSN				
Part Number				
Estimated Forecast Quantity	Year 1	Year 2	Year 3	Year 4
Crisp IMC				
CSIS NSC				
D of Q				
Packaging Requirement				
CSIS Description				
QA Requirement				
Magnetic Group Code				
Delivery Method				
PRICING				
PRICING	As per the contract – firm price not subject to Variation of Price and in GBP. EX VAT			
ITC RESPONSE				
CONTRACTOR'S RESPONSE TO ITC	<p>The Contractor shall:</p> <ol style="list-style-type: none"> <li>1. fully complete and submit the attached Bidding Sheet in response to an ITC by the final date and time for submission detailed below;</li> <li>2. submit a completed Contractor's Commercially Sensitive Information Form (Annex I);</li> <li>3. submit a complete Annex H -ITC DEFFORM 47 (offer);</li> <li>4. submit a Firm Price for all remaining years (inclusive of all costs and not subject to variation) and;</li> <li>5. Submit any further information as requested by the Authority under Additional Information below.</li> </ol>			



FINAL DATE FOR SUBMISSION OF COMPLETED BIDDING SHEET.	<p>Bidding Sheets shall be sent by e-mail to:</p> <p><b>[INSERT COMMERCIAL OFFICER EMAIL]</b></p> <p><b>by [INSERT TIME] on [INSERT DATE]</b></p> <p>An award decision will be notified within 30 calendar days, unless otherwise notified by the Authority.</p>
<b>BIDDING SHEET EVALUATION</b>	
AWARD DECISION	<p>The ITC will be awarded to the technically compliant lowest price.</p> <p>Unless stated otherwise by the Authority.</p>
<b>ADDITIONAL INFORMATION</b>	

## Annex G- ITC Bidding Sheet

This Bidding Sheet is in response to Invitation to Compete (ITC) LSMS/012 and the Contractor acknowledges and agrees to abide by the Terms and Conditions of the ITC and Framework Agreement LSMS/012 in compiling its bid.

Bidding Sheet Evaluation Guidance and Methodology is detailed below.

Framework Providers shall complete the boxes below as applicable:

CRITERIA	SUB-CRITERIA REFERENCE NUMBER	EVALUATION APPROACH	REQUIRED INFORMATION	CONTRACTOR RESPONSE	REQUIRED RESPONSE
FRAMEWORK PROVIDER DETAILS	N/A	INFO	Framework Provider name		Framework Provider name has been provided.
	N/A	INFO	Framework Provider Representative name		Framework Provider Representative name has been provided.
FRAMEWORK PROVIDER DELIVERY INFORMATION  MCC1	MCC1	PASS/FAIL	Framework Provider is to confirm that it can meet the delivery requirements stated within the ITC.		Framework Provider has confirmed that it can meet the delivery requirements
COMPLIANCE WITH REQUIREMENT  MCC2	MCC2.1	PASS / FAIL	Framework Provider is to confirm they can provide NSN as detailed within the ITC.		Framework Provider has confirmed that they can provide the NSN.
	MCC2.2	PASS / FAIL	Framework has provided a copy of the Safety Data Sheet (where applicable)		Framework Provider has provided a

					Safety data sheet
<b>FRAMEWORK PROVIDER FIRM PREMIUM</b>  <b>MCC3</b>	MCC3.1	PASS / FAIL/ N/A	Framework Provider is to provide its Firm Premium for Year 1		Framework Provider has provided a Firm Premium.
	MCC3.2	PASS/FAIL /N/A	Framework Provider is to provide its Firm Premium for Year 2		Framework Provider has provided a Firm Premium.
	MCC3.3	PASS/FAIL /N/A	Framework Provider is to provide its Firm Premium for Year 3		Framework Provider has provided a Firm Premium.
	MCC3.4	PASS/FAIL /N/A	Framework Provider is to provide its Firm Premium for Year 4		Framework Provider has provided a Firm Premium.
<b>LEAD TIME</b>  <b>MCC4</b>	MCC4.1	PASS / FAIL N/A	<p>Framework Provider is to provide a reasonable, achievable lead time.</p> <p>Please note, any lead time considered excessive by the Authority may be subject to further review.</p>		Framework Provider has provided a Lead time.
<b>PPQ</b> <b>MCC5</b>	MCC5.1	PASS / FAIL N/A	Framework Provider is to provide a PPQ is applicable		Framework Provider has provided a PQQ.
<b>MOQ</b> <b>MCC6</b>	MCC6.1	PASS / FAIL N/A	Framework Provider is to provide a MOQ if applicable.		Framework Provider has provided a PQQ.
<b>Shelf Life</b> <b>MCC7</b>	MCC7.1	PASS/FAIL/ N/A	Framework Provider is to provide a Shelf Life if applicable.		Framework Provider has provided a Shelf Life.

<b>ADDITIONAL INFORMATION MCC8</b>	MCC5.1	PASS / FAIL			
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## Annex H – ITC DEFFORM 47

### Ministry of Defence

**Tender Ref No. LSMS/012**

### **TENDER SUBMISSION DOCUMENT (OFFER)**

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

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

<b>Applicable Law English</b>	
I agree that any contract resulting from this competition shall be subject to English Law  *Where 'No' is selected, Scots Law will apply.	Yes / No*
<b>Total Value of Tender (excluding VAT)</b>	
£ .....	
WORDS .....	
<b>UK Value Added Tax</b>	
If registered for Value Added Tax purposes, please insert:	
a. Registration No .....	
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....	
<b>Location of work (town / city) where contract will be performed by Prime:</b>	
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)	

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

Have you completed the additional Mandatory Requirements?		Yes / No / Not Required
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).		
<b>Tenderer's Declaration of Compliance with Competition Law</b>		
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <p>a. the offered price has not been divulged to any Third Party,</p> <p>b. no arrangement has been made with any Third Party that they should refrain from tendering,</p> <p>c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion,</p> <p>d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and</p> <p>e. no arrangement has been made with any Third Party otherwise to limit genuine competition.</p> <p>We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.</p> <p>We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.</p> <p>We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.</p>		
Dated this..... day of ..... Year .....		
<b>Signature:</b>  (Must be original)		<b>In the capacity of</b>  ..... (State official position e.g. Director, Manager, Secretary etc.)
<b>Name:</b> (in BLOCK CAPITALS)  <b>duly authorised to sign this Tender for and on behalf of:</b>  (Tenderer's Name)	<b>Postal Address:</b>   <b>Telephone No:</b>  <b>Registered Company Number:</b> <b>Dunn And Bradstreet number:</b>	



## Annex I – ITC DEFFORM 539A

### Contractors Commercially Sensitive Information

Contract Ref No: LSMS/012
Description of Contractor's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information in Tender / Contract:
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:

## Annex J – ITC DEFFORM 68

### HAZARDOUS AND NON-HAZARDOUS SUBSTANCES, MIXTURES OR ARTICLES STATEMENT BY THE CONTRACTOR

**Contract Number:** LSMS/012

**Contract Title:** Maritime Consumables and Furnishings

**Contractor:** [insert name here]

**Date of Contract:** [insert here]

☐ \* To the best of our knowledge there are no hazardous Substances, Mixtures or Articles to be supplied. ☐

☐ \* To the best of our knowledge the hazards associated with Substances, Mixtures or Articles to be supplied under the Contract are identified in the Safety Data Sheets or UK REACH Article 33 Communication attached in accordance with either:

DEFCON 68 ☐; or

Special Condition 9 of Standardised Contract 1A/B Conditions.

**Contractor's Signature:** [insert here]

**Name:** [insert here]

**Job Title:** [insert here]

**Date:** [insert here]

\*check box (☒) as appropriate

---

**To be completed by the Authority**

**DMC:** [insert here]

**NATO Stock Number:** [insert here]

**Contact Name:** [insert here]

**Contact Address:** [insert here]

**Contact Phone Number:** [insert here]

**Contact Email Address:** [insert here]

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)

Department of Safety & Environment, Quality and Technology (D S & EQT

Spruce 2C, #1260

MOD Abbey Wood (South)

Bristol, BS34 8JH

Email: [DESTECH-QSEPEnv-HSISMulti@mod.gov.uk](mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk)

## Annex K – Remediation Plan Template

*This Remediation Plan is to be used by the Supplier to outline the necessary remediation steps to improve any performance issues or any other area where a supplier has materially breached the contract or has been requested by the Authority.*

*Points 1- 4 to be completed by the Supplier ahead of Submission to the Authority*

### 1. Background of Issues

*The Supplier is to use this table to give a **brief** overview of the issues causing the necessity of a Remediation Plan.*

### 2. Actions for Resolution

*The Supplier is to provide a description of the measures being taken to resolve the issues listed above, and any further information that is relevant, please include milestone or completion dates for each action.*

Issue	Remedial Actions	Completion Date	Action Owner

### 3. Intended Final Resolution Date

*The Supplier is to detail their Firm Resolution Date. Please note for Remediation Plans associated to improving KPI performance, Suppliers will be required to provide a date for when the required performance standard of Green will be achieved, however the Remediation Plan will not be considered complete unless the Supplier maintains a Green performance for 2 consecutive months following their firm resolution date.*

### 4. Future Preventative Measures

*The Supplier is to provide a list of ongoing measures will be taken to prevent any future issues arising.*

Submitted by:	
Title:	
Date:	

*Point 5 To be completed by the Authority:*

### 5. Authority Comments to proposed Remediation Plan:

#### **Authority Acceptance of Remediation Plan:**

Name	
Title	
Date	

6. The following section is to be completed by the Supplier to assist with Remediation Progress Reviews or Meetings with the Authority.

Action	Comments/ Progress	On Target for Completion

#### 7. Remediation Plan Outcome

To be completed by the Authority following the Firm Resolution Date.

<b>Authority Acceptance of Remediation Plan Completion:</b>	
Name	
Title	
Date	

## ANNEX L - DEFFORM 111

### DEFFORM 111

#### Appendix - Addresses and Other Information

##### 1. Commercial Officer

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_ (( \_\_\_\_\_

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

Name: \_\_\_\_\_

Address \_\_\_\_\_

Email: \_\_\_\_\_ (( \_\_\_\_\_

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

\_\_\_\_\_

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

(( \_\_\_\_\_

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

Branch/Name: \_\_\_\_\_

(( \_\_\_\_\_

(b) U.I.N. \_\_\_\_\_

##### 5. Drawings/Specifications are available from \_\_\_\_\_

##### 6. Intentionally Blank

##### 7. Quality Assurance Representative: \_\_\_\_\_

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

8. **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].

##### 9. Consignment Instructions The items are to be consigned as follows: \_\_\_\_\_

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

A. **DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34

8JH

Air Freight Centre

IMPORTS (( 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS (( 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS (( 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS (( 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B.JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)

**11. The Invoice Paying Authority**

Ministry of Defence, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

(( 0151-242-2000 Fax: 0151-242-2809

**Website** is: <https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site, Lower Arcnott, Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** [Leidos-FormsPublications@teamleidos.mod.uk](mailto:Leidos-FormsPublications@teamleidos.mod.uk)

**\* NOTE**

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

<https://www.kid.mod.uk/maincontent/business/commercial/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

**Deliverables**

This matrix is intended to provide an overview of the parties' contractual obligations to assist with contract management. It does not form part of the contract and should not be relied upon to aid interpretation of the contract. In the event of any conflict, inconsistency or discrepancy between this matrix and the contract, the terms of the contract shall take precedence.

**All Negotiation Deliverables**



Name	Description	Due	Responsible Party
Obligation DEFCON 21 ( Edn 06/21) Clause - 3a - Maintenance of Deliverables (reminder)	To maintain at least one copy of all deliverable information to which DEFCON 21 applies during the period of the Contract and for at least two years after the Contract, or period as may be specified in the contract.	Due 1 month before Contract Agreement End Date	Contractor Organization
Obligation DEFCON 91 ( Edn 06/21) Clause - 5b - Software as required	A copy of the Software as is required for performance of obligations to be retained.	Due 3 months before Contract Agreement Start Date	Contractor Organization
Obligation Condition 1.c.(2) - Notification of litigation	Notification of; Litigation, arbitration, administrative, adjudication or mediation proceedings against itself or a Subcontractor		Contractor Organization
Obligation Condition 1.c.(4) - Notification of Winding-up	Notice of any proceedings or steps taken for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator,		Contractor Organization
Obligation Condition 5.b - Notice of inconsistency between contract documents	If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith		Contractor Organization
Obligation Condition 16.a - Change of Control of Contractor	Written Notification of any intended, planned or actual change in control of the Contractor, including any Sub-contractors.		Contractor Organization
Obligation Condition 16.b - Notification of Concern due to Change of Control	advise the Contractor in writing of any concerns due to Change of Control		Contractor Organization
Obligation Condition 18.a - Contractors Records (reminder)	maintain all records in connection with the Contract for a period of at least six (6) years	Due 3 months before Contract Agreement End Date	Contractor Organization
Obligation	attend progress meetings at	Repeats every 3	Contractor

Condition 20.a - Attendance at Progress Meetings	the frequency or times specified in the contract	months on the First Day of the Month starting 1 month after Contract Agreement Start Date until 0 day after Contract Agreement End Date	Organization
Obligation Condition 20.b - Progress Reports	submit progress reports at the times and in the format specified in the contract	Repeats every 3 months on the First Day of the Month starting 1 month after Contract Agreement Start Date until 0 day after Contract Agreement End Date	Contractor Organization
Obligation Condition 23.e, 24.a, and 24.c - Safety Data Sheet	provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverable containing such.		Contractor Organization
Obligation Condition 23.f.(6) And Condition 23.g.(1).(b) - Documents relating to design of new MLP Packaging	"All SPIS, new or modified, shall be uploaded by the on to SPIN. where the Contractor is the PDA and registered a list of all SPIS which have been prepared or revised against the Contract; and a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings shall be provided for upload"		Contractor Organization
Obligation Condition 24.d - Schedule 6 hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements	a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements)	Due 0 day after Contract Agreement Start Date	Contractor Organization
Obligation	in addition to the		Contractor

Condition - Compliance with hazard reporting requirements for materials or substances are ordnance, munitions or explosives	requirements of CHIP and / or the CLP Regulation 1272/2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.		Organization
Obligation Condition 25.c - Source of Timber and Wood	If requested Evidence that the Timber and Wood-Derived Products supplied to the Authority comply with the requirements of clause 25.a or 25.b or both.		Contractor Organization
Obligation Condition 26.a - Certificate of Conformity	Provide a Certificate of Conformity and any applicable Quality Plan		Contractor Organization
Obligation Condition 36.c - Payment	no later than 30 days from receipt of valid undisputed invoice		Contractor Organization
Obligation Condition 37.c - Notification of applicable VAT	Notification of VAT liability or changes to it		Contractor Organization
Obligation Condition 42.c.(2) - Post notification of Termination	List of Unused and undamaged materiel; contractor deliverables in the course of manufacture.		Contractor Organization
Obligation Clause Condition 42.f - Subcontract Termination	inclusion of Termination clause in subcontracts over £250,000	Due 0 day after Contract Agreement Start Date	Contractor Organization
Commercial Exploitation Levy - Reminder that Statements of Sales and Auditor Certificate are required annually	Applicable to contracts with Commercial Exploitation Agreements. A reminder to Contractors that Statements of Sales along with Auditor Certificate are required annually.	Repeats every 12 months on the First Day of the Month starting on 01-JAN-2020 until 12 months after Contract Agreement End Date	Contractor Organization

## Buyer Contractual Deliverables

Name	Description	Due	Responsible Party
Obligation Condition 5.b - Notice of inconsistency between contract documents	If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith		Buyer Organization
Obligation Condition 8.c - Change in Authority Representatives	Written confirmation of any change to the Authorities Representatives		Buyer Organization
Obligation Condition 14.f.(6) - Use of confidentiality agreement	Disclosure of Information on a confidential basis shall be subject to a confidentiality agreement containing terms no less stringent than those placed on the Authority		Buyer Organization
Obligation Condition 33.a 33.i - Import Export Licence Information	sufficient information, certification, documentation and other reasonable assistance to obtain necessary UK import/export licence or to facilitate the granting of export/import licences or authorisations by a foreign Government		Buyer Organization
Obligation Condition 33.l - Notification of restrictions in use due to non-UK licence	If all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable	Due 1 week after Contract Agreement Start Date	Buyer Organization
Obligation Condition 36.a - Register on CP&F	provide details for registration on CP&F		Buyer Organization
Obligation Condition 42.a - Termination	Written notice of Termination of part or whole of contract		Buyer Organization

