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11 November 2022

Dear Sir / Madam

Invitation to Tender Reference 703883451

1. You are invited to tender for the Provision of Pre-Joining Fitness Tests for Royal Navy, Royal Marines and Royal Air Force Candidates in competition in accordance with the attached documentation.
2. The requirement is set out in Schedule 10 - Statement of Requirements.
3. The total budget is £2,601,000.00 (excluding VAT).
4. You may raise questions about the tender and the requirement via the Defence Sourcing Portal. The deadline for asking questions is 10:00 on 25 November 2022. Please note that any questions raised, and the answers provided, may be shared with other interested suppliers.
5. You must submit your Tender via the Defence Sourcing Portal by 10:00 on 12 December 2022. You should allow sufficient time for submission as late tenders will not be accepted. Tender responses should answer all evaluation questions, include all completed documents and provide all requested prices.
6. The anticipated date for the contract award decision is 16 January 2023. Please note that this is an indicative date and may change.

Yours faithfully

Katie Goble
Commercial Manager

Contents

This Invitation to Tender sets out the requirements that Tenderers must meet to submit a valid Tender. It also contains the draft Contract, further related documents and forms and sets out the Authority's position with respect to the competition.

This invitation consists of the following documentation:

- DEFFORM 47 – Invitation To Tender. The DEFFORM 47 sets out the key requirements that Tenderers must meet to submit a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
 - Section A – Introduction
 - Section B – Key Tendering Activities
 - Section C – Instructions on Preparing Tenders
 - Section D – Tender Evaluation
 - Section E – Instructions on Submitting Tenders
 - Section F – Conditions of Tendering
 - DEFFORM 47 Annex A – Tender Submission Document (Offer)
 - Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations
- Contract Documents (As per the contents table in the Terms and Conditions)
 - Terms & Conditions which includes the Schedule of Requirements and any additional Schedules, Annexes and/or Appendices
- DEFFORM 111 – Appendix to Contract - Addresses and Other Information
- DEFFORM 532 – Personal Data Particulars
- DEFFORM 539A – Tenderer's Sensitive Information Form (SC2 Schedule 5)
- Statement Relating to Good Standing
- Cyber Risk Assessment
- DEFFORM 711 - Notification of IPR Restrictions

Section A – Introduction

DEFFORM 47 Definitions

In this ITT the following words and expressions shall have the meanings given to them below:

A1. “The Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown.

A2. “Compliance Regime” is a legally enforceable set of rules, procedures, physical barriers and controls that, together, act to prevent the flow of sensitive or protected information to parties to whom it may give an unfair advantage.

A3. “Conditions of Tendering” means the conditions set out in this DEFFORM 47 that govern the competition.

A4. A “Consortium Arrangement” means two or more economic operators who have come together specifically for the purpose of bidding for this Contract and who establish a consortium agreement or special purpose vehicle to contract with the Authority.

A5. “Contract” means a Contract entered into between the successful Tenderer or consortium members and the Authority, should the Authority award a Contract as a result of this competition.

A6. “Contract Terms & Conditions” means the attached conditions including any schedules, annexes and appendices that will govern the Contract entered into between the successful Tenderer and the Authority, should the Authority award a Contract as a result of this competition.

A7. “Contractor Deliverables” means the works, goods and/or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance (QA) requirements if specified) which the Contractor is required to provide under the Contract.

A8. “Cyber Security Model” means the model defined in DEFCON 658.

A9. “Defence Sourcing Portal” means the electronic platform in which Tenders are submitted to the Authority.

A10. “Government Furnished Information” means information or data issued or made available to the Tenderer in connection with the Contract by or on behalf of the Authority.

A11. “ITT Documentation” means this ITT and any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access by the Authority, for the purposes of responding to this ITT.

A12. “ITT Material” means any other material (including patterns and samples), equipment or software, in any medium or form issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT.

A13. “Schedule of Requirements” (Section 1 in Terms and Conditions, Schedule 2 in Standardised Contracting Template 1B (SC1B) or Schedule 2 in Standardised Contracting Template 2 (SC2)) means that part of the Contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.

A14. The “Statement of Requirement” (Schedule 9) means that part of the Contract which details the technical requirements and acceptance criteria of the Contractor Deliverables.

A15. A 'Sub-Contractor' means any party engaged or intended to be engaged by the Contractor at any level of sub-contracting to provide Contractor Deliverables for the purpose of performing this Contract.

A16. A "Sub-Contracting Arrangement" means a group of economic operators who have come together specifically for the purpose of bidding for this Contract, where one of their number will be the party to the Contract with the Authority, the remaining members of that group being Sub-Contractors to the lead economic operator.

A17. A "Tender" is the offer that you are making to the Authority.

A18. "Tenderer" means the economic operator submitting a response to this Invitation to Tender. Where "you" is used this means an action on you the Tenderer.

A19. A "Third Party" is any person (including a natural person, corporate or unincorporated body (whether or not having separate legal personality)), other than the Authority, the Tenderer or their respective employees.

Purpose

A20. The purpose of this ITT is to invite you to submit a Tender, in accordance with the instructions set out in this ITT, to propose a solution and best price to meet the Authority's requirement. This documentation explains and sets out the:

- a. timetable for the next stages of the procurement;
- b. instructions, conditions and processes that governs this competition;
- c. information you must include in your Tender and the required format;
- d. arrangements for the receipt and evaluation of Tenders;
- e. criteria and methodology for the evaluation of Tenders; and
- f. Contract Terms & Conditions;

A21. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance and/or precedence.

A22. This requirement was advertised by the Authority in Defence Sourcing Portal dated 11 November 2022 under the following reference 703883451. This notice will also be transferred to Find A Tender and Contracts Finder.

A23. This ITT is subject to the Public Contract Regulations 2015.

A24. This ITT has been advertised on the Defence Sourcing Portal (DSP) under the Open procedure.

A25. A Contract Bidders Notice has not been advertised because this requirement is under the Open procedure and Bidders are not yet known.

A26. Funding has been approved for this requirement.

ITT Documentation and ITT Material

A27. ITT Documentation, ITT Material and any Intellectual Property Rights (IPR) in them shall remain the property of the Authority or other Third-Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;

- b. not copy or disclose the ITT Documentation or ITT Material to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
- d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A27.c, which as a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
- e. accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and/or infringement of IPR, a remedy which may involve a claim for compensation;
- f. inform the named Commercial Officer if you decide not to submit a Tender;
- g. immediately confirm destruction of (or in the case of software, that it is beyond use) all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
- h. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.

A28. Some or all the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement are in addition to, and do not derogate from, your obligations under paragraph A27 above.

Tender Expenses

A29. You will bear all costs associated with preparing and submitting your Tender. The Authority will not be liable for the costs of any Tender, work or effort incurred by you participating in this tender process, including where the tender process is terminated or amended by the Authority, where the Authority decides not to award a Contract or where you withdraw from the tender process either directly or indirectly as costs under any other Contract with the Authority.

Consortia and Sub-Contracting Arrangements

A30. The Authority requires all Tenderers to identify whether any and/or which Consortium Arrangements or Sub-Contracting Arrangements will apply in the case of their Tender, and in particular specify the Consortium Arrangement or Sub-Contracting Arrangement entity or both and their workshare. In the case of a Sub-Contracting Arrangement, the Authority requires all Tenderers to identify the entity that will be the party to the Contract with the Authority.

Material Change of Control

A31. You must inform the Authority in writing as soon as you become aware of:

- a. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of your PQQ response or in connection with the submission of your PQQ response;
- b. any material adverse change in your circumstances which may affect the truth, completeness or accuracy of any information provided as part of your PQQ response or in

connection with the submission of your PQQ response or in your financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member; or

- c. any material changes to your financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; and
- d. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:
 - i. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured;
 - ii. the identity of Consortium Arrangement or Sub-Contracting Arrangement;
 - iii. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and
 - iv. any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.

A32. If a change described in paragraph A31 occurs, the Authority may reassess you against the PQQ selection criteria. The Authority reserves the right to require you to submit an updated/amended PQQ response (or parts thereof) to reflect the revised circumstances so that the Authority can make a further assessment by applying the published selection criteria to the new information provided. The outcome of this further assessment may affect your suitability to proceed with the procurement.

A33. In relation to a change described in paragraph A31, as far as is reasonably practicable, you must discuss any such proposed changes with the Authority before they occur and you must additionally highlight any changes from your PQQ response relating to any change in the Consortium Arrangement or Sub-Contracting Arrangement or any change relating to conflicts of interest following a change, directly or indirectly in your ownership or control or of any Consortium Arrangement or Sub-Contracting Arrangement

A34. The Authority reserves the right, at its sole discretion to disqualify any Tenderer who makes any material change to any aspects of its responses to the PQQ if:

- a. it fails to re-submit to the Authority the updated relevant section of its PQQ response providing details of such change in accordance with paragraph A33 as soon as is reasonably practicable and in any event no later than [X] business days following request from the Authority; or
- b. having notified the Authority of such change, the Authority considers that the effect of the change is such that on the basis of the evaluation undertaken by the Authority for the purpose of selecting potential providers to participate in the procurement, the Tenderer would not have pre-qualified.

Contract Terms & Conditions

A35. The Contract Terms & Conditions include all attachments listed in the contents of the Terms & Conditions, such as the Schedule of Requirements, any additional Schedules, Annexes and/or Appendices. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the [Knowledge in Defence \(KiD\)](#) website.

A36. Standardised Contract 2 (SC2) conditions are attached.

Other Information

A37. **The Armed Forces Covenant**

- a. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives, as a result of their service.
- b. The Covenant is based on two principles:
 - i. That the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
 - ii. That special consideration is appropriate in some cases, especially for those who have given most, such as the injured and the bereaved.

The Authority encourages all Tenderers, and their suppliers, to sign the Armed Forces Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.

c. [The Armed Forces Covenant](#) provides guidance on the various ways you can demonstrate your support through your Covenant pledges and how by engaging with the Covenant and Armed Forces, such as employing Reservists, a company or organisation can also see real benefits in their business.

d. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the

Authority can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: employerrelations@rfca.mod.uk

Address: Defence Relationship Management

Ministry of Defence
Holderness House
51-61 Clifton Street
London
EC2A 4EY

e. Paragraph A37 a to d above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation, Contract award procedure or any resulting Contract. However, the Authority very much hopes you will want to provide your support.

A38.

Contract Documents

Any contract resulting from this tender will be formed from the MOD Terms & Conditions and associated Schedules, including the Statement of Requirements and Schedule of Requirements, incorporating prices submitted by the Winning Tenderer.

If the Winning Tenderer does not enter into the Contract following contract award, the Authority reserves the right to terminate that Contract and award the Contract to the next best placed Tenderer or to cancel or re-run the procurement.

IR35

IR35 off payroll working rules are not expected to apply to this requirement unless the Winning Tenderer indicates that the personnel who will be used to deliver Services will not be employed through their payroll. In those circumstances, a relevant assessment will be

considered.

Cyber Risk

A Cyber Risk Assessment has been raised and the profile is Moderate. The reference is RAR-SA7VTSQU7.

A Supplier Assurance Questionnaire does need to be completed.

Where a Supplier Assurance Questionnaire needs to be completed, Tenderers must complete this online at <https://production.prod.digitaldds.co.uk> and submit a copy of the completed questionnaire, confirming their score, as part of the tender submission.

If a Tenderers Supplier Assurance Questionnaire score does not meet the level set in the Cyber Risk Assessment, this does not prevent submission of a Tender. In those circumstances, a Cyber Implementation Plan should be completed as part of the tender submission, to demonstrate what actions will be taken to meet the required Cyber Risk level. Provided the actions and timescales were considered acceptable to The Authority, the Cyber Implementation Plan would then be included as a requirement in any resulting Contract.

Cyber Implementation Plan Template

MOD contract number:	
CSM Risk Acceptance Reference:	
CSM Cyber Risk Profile:	
Name of Supplier:	
Current level of Supplier compliance:	
Reasons unable to achieve full compliance:	
Measures planned to achieve compliance / mitigate the risk with dates:	
Anticipated date of compliance / mitigations in place:	

Section B – Key Tendering Activities

The key dates for this procurement are currently anticipated to be as follows:

Stage	Date and Time	Responsibility	Submit to:
Invitation to Tenderers' Conference	Not Applicable to this procurement		
Date for confirmation of attendance at Tenderers' Conference	Not Applicable to this procurement		
Final date for Clarification Questions/Requests for additional information	25 November 2022	Tenderers	Defence Sourcing Portal
The Authority issues Final Clarification Answers	02 December 2022	The Authority	All Tenderers
Tender Return	12 December 2022	Tenderers	Defence Sourcing Portal
Tender Evaluation	13 December 2022 to 15 January 2023	The Authority	N/A
Negotiations	Not Applicable to this procurement		
Reverse Auction	Not Applicable to this procurement		
Trials/Testing	Not Applicable to this procurement		

Notes

Tenderers Conference

B1. A Tenderers Conference is not being held.

Clarification Questions

B2. The Authority will automatically copy clarification questions and answers to all Tenderers, removing the names of those who have raised the clarification questions. If you wish the Authority to treat the clarification as confidential and not issue the response to all Tenderers, you must state this when submitting the clarification question and provide justification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Tenderer, who will have an opportunity to withdraw the question. If the clarification question is not withdrawn, the response will be issued to all Tenderers.

Tender Return

B0. The Authority may, in its own absolute discretion extend the deadline for receipt of tenders and in such circumstances the Authority will notify all Tenderers of any change.

Negotiations

B4. Negotiations do not apply to this tender process.

Section C - Instructions on Preparing Tenders

Construction of Tenders

C1. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP ex VAT. Prices must be Firm Prices.

C2. To assist the Authority's evaluation, you must set out your Tender response in accordance with Section D (Tender Evaluation).

Validity

C3. Your Tender must be valid and open for acceptance for ninety (90) calendar days from the Tender return date. In addition, the winning Tender must be open for acceptance for a further thirty (30) calendar days once the Authority announces its decision to award the Contract. In the event that legal proceedings challenging the award of the Contract are instituted, before entry into Contract, you must hold your Tender open for acceptance during this period, and for up to fourteen (14) calendar days after any legal proceedings have concluded.

Section D – Tender Evaluation Criteria

D1. This section details how your Tender will be evaluated.

D2. The Tender evaluation will calculate the Most Economically Advantageous Tender (MEAT) to The Authority based on the following calculation:

$$\text{Evaluation Score} = \frac{\text{Total Price}}{\text{Total Technical Score}}$$

D3. Any Tender which is considered non-compliant for any Commercial, Financial or Technical element or criteria will be excluded from the competition and not receive an Evaluation Score. If a tender is considered non-compliant in either the Commercial or Financial evaluations that tender may be excluded from the Technical evaluations and not receive any Technical scores or feedback.

D4. The Tenderer with the lowest Evaluation Score will be considered to be the Winning Tenderer and awarded any resulting contract.

D5. In the event that multiple Tenderers achieve the exact same lowest Evaluation Score, then the Tenderer with the lowest Total Price will be considered to be the Winning Tenderer. In the event that multiple Tenderers achieve the exact same lowest Evaluation Score and have the exact same lowest Total Price, then The Authority reserves the right to request those, and only those, Tenderers to submit final and best Total Prices, with the lowest final and best Total Price considered to be the Winning Tenderer.

D6. Tenderers must provide relevant answers and all requested documentation in response to all commercial qualification, financial and technical criteria/questions.

D7. Tenders will be evaluated based on the contents of their Tender response only.

D8. Tenderers should submit only one priced proposal.

D9. Technical Evaluation will be undertaken independently from Commercial and Financial Evaluations. Technical evaluators will have no knowledge of associated prices. Tenderers must ensure that there are no prices shown within any technical criteria responses or supporting documents.

D10. Should any exclusions, assumptions, dependencies or caveats apply to your Tender or any of the goods and/or services that you would provide when delivering the requirements, these should be clearly indicated in the relevant areas of the Tender.

Commercial Qualification Evaluation

D11. The Commercial Qualification Evaluation will assess if all tendering and contractual requirements have been provided.

D12. A Tender will be considered non-compliant if:

- the Tender was not received by the due date and time.
- the full set of requirements cannot be delivered.
- any required delivery dates cannot be met.
- all MOD Terms & Conditions have not been accepted.
- any other required documentation was not submitted.

- any prices have been included in the technical responses and this is considered to have affected the evaluation process.

D13. The Authority reserves the right to undertake a financial health check of Tenderers as part of the Commercial Evaluation. If a Parent Company or Bank guarantee is requested and is not provided, The Authority retains the right to consider the Tenderer non-compliant.

Financial Evaluation

D14. The Financial Evaluation will assess the Total Price the Tenderer has offered to deliver all the requirements set out in the Statement of Requirements.

D15. Prices should be provided for each item listed in the Schedule of Requirements. The Total Price should be confirmed on Tender Annex A. This shall be the total maximum cost for the provision of all goods and/or services listed, as detailed in the Statement of Requirement, for the quantities quoted and for the full maximum duration of the requirement, including any optional goods/services and/or periods.

D16. The Total Price figure that will be used in the evaluation of Tenders shall be the total figure that is calculated from the prices Tenderers have provided for each item listed in the Schedule of Requirements, for the full maximum duration of the requirement, including any optional goods/services and periods.

D17. Tenderers are notified that when the contract is in place, payments for goods and/or services will be made after the goods and/or services have been fully delivered. For example, payment for purchase of an item will be made after it has been delivered and installed or payment for annual maintenance of a piece of equipment will be made at the end of the contract year during which the maintenance was undertaken.

D18. Where estimated Authority usage figures are shown on the Schedule of Requirements, the Total Price figure shall not be a guarantee of quantities required or payments to be made under any resulting Contract.

D19. A Tender will be considered non-compliant if:

- the Total Price is greater than the total available funding of £2,601,000; or
- Annex A shows an incorrect Total Price as the Total Price calculation is above the available funding; or
- the Tender does not indicate a Total Price; or
- the Tender has not provided prices for all items in the Schedule of Requirements.

Technical Evaluation

D20. The Technical Evaluation will assess the Tender response to establish the level of confidence The Authority has that the Tenderer will be able meet and deliver all the requirements detailed in the Statement of Requirements.

D21. The Technical Evaluation will allocate points to a set of evaluation criteria. These criteria may also be weighted, with the points allocated to each individual criteria being multiplied by the associated weight to give a score for that individual criteria. The points, weightings and scores available for each criteria are indicated in the Technical Criteria Table. Guidance on how Tenders will be scored is in the Scoring Criteria Table.

D22. The Technical Evaluation may also assess some criteria on a pass/fail basis. These

criteria will not be included in the Total Technical Score calculation. Guidance on how Tenders will be scored is in the Scoring Criteria Table.

D23. The scores awarded for each individual criteria, excluding any pass/fail criteria, will be added together to give the Total Technical Score.

D24. Technical evaluators are considered to be Subject Matter Experts in the areas they are evaluating. If an individual criteria is evaluated by more than the one evaluator, then each evaluator will undertake their own assessment before attending a moderation meeting where those evaluators will agree an overall consensus points figure for that criteria. This moderated consensus points figure will be used for the purposes of the evaluation.

D25. Evaluators will assess each question individually and will not be expected to search for answers. Where a Tenderers answer to any technical criteria question is covered within a separately attached document, the text answer to that criteria question must clearly indicate the relevant part of the supporting document in which the answer can be found. Any documents that have not been referenced will be discounted during evaluation.

D26. Where Social Value evaluation criteria are included, Tenderer responses should indicate how they will provide social value specifically whilst delivering the goods and/or services required under this contract. Responses should not just refer to any overarching Corporate Social Responsibility statement. Further information on social value criteria, which guidance and examples, can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940828/Social-Value-Model-Quick-Reference-Table-Edn-1.1-3-Dec-20.pdf

D27. A Tender will be considered non-compliant if:

- the Tender receives a fail on any pass/fail criteria; or
- the Tender receives points which are below the threshold set for any individual criteria; or
- the Tender receives a Total Technical Score below 60.

D28. Technical Criteria Table

Figure	Criteria	Points Available	Minimum Threshold	Weight	Score Available
A	Confirm that you will hold CIMSPA (The Chartered Institute for the Management of Sport and Physical Activity) accreditation or equivalent.	Pass or Fail	Pass	N/A	Pass or Fail
B	Confirm that you will hold Public Liability Insurance in all gyms.	Pass or Fail	Pass	N/A	Pass or Fail
C	Confirm that all Personal Trainers will hold a minimum of a Gym Level 2 qualification.	Pass or Fail	Pass	N/A	Pass or Fail
1	State how you will ensure you are able to provide the annual quantity of tests required and state what measures you will put in place to ensure this is achieved and that you will always have a qualified Physical Trainer available to perform either of the tests.	0, 30, 70 or 100	30	11.30%	11.30

2	Outline how you will ensure the geographical coverage is provided as articulated in the Statement of Requirements (that no applicant shall be required to travel more than 1 hour, by public transport, from their nearest train or bus station in order to be tested).	0, 30, 70 or 100	30	11.30%	11.30
3	State how you will ensure that a quality service is delivered and that contractual obligations will be met, including how you will deliver the Quality Assurance requirements detailed in the Statement of Requirement.	0, 30, 70 or 100	30	11.20%	11.20
4	State how you will ensure compliance with the relevant Health and Safety legislation and the Health and Safety requirements outlined in the Statement of Requirement.	0, 30, 70 or 100	30	11.20%	11.20
5	State how you will deliver all training requirements, for both the Pre-joining Fitness Test and the Pre-joining Fitness Test Plus, included in the Statement of Requirements.	0, 30, 70 or 100	30	11.30%	11.30
6	Outline the resources and equipment that you will deploy to manage and deliver this requirement	0, 30, 70 or 100	30	11.20%	11.20
7	State how you will identify and mitigate any risks.	0, 30, 70 or 100	30	11.20%	11.20
8	State how you will deliver and manage the Services detailed in the Statement of Requirement if for example one of the gyms is unable to deliver the Tests, or you do not have a gym in an area that we may have suggested we need.	0, 30, 70 or 100	30	11.30%	11.30
9	Social value – Tackling economic inequality: MAC 3.5: Explain how you will demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain.	0, 30, 70 or 100	30	5.00%	5.00
10	Social value – Fighting Climate Change: MAC 4.2 Explain how you will influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement.	0, 30, 70 or 100	30	2.50%	2.50
11	Social value – Equal Opportunity: MAC 6.1 Explain how you will demonstrate action to identify and tackle inequality in employment,	0, 30, 70 or 100	30	2.50%	2.50

	skills and pay in the contract workforce				
				100%	100

D29. Scoring Criteria Table

Pass	Fail
<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: clearly details how the requirements or criteria will be met in full and sufficient evidence has been provided, where applicable.</p> <p>clearly shows that any required volumes, timescales, standards or support will be met, where applicable.</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: does not clearly detail how the requirement or criteria will be met in full and sufficient evidence has not been provided, where applicable.</p> <p>does not clearly show that any required volumes, timescales, standards or support will be met, where applicable.</p>

100 – High Confidence	70 – Good Confidence	30 – Moderate Confidence	0 – Low Confidence
<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: addresses and demonstrates a thorough understanding of all elements of the requirement or criteria, where applicable.</p> <p>provides a comprehensive, unambiguous and thorough explanation of how all of the requirement or criteria will be delivered, where applicable.</p> <p>details a thorough explanation of how the full volumes and timescales of the requirement or criteria will be met, where applicable.</p> <p>provides comprehensive details showing how all of the requirement or criteria will be managed with sufficient resource allocated and support provided for the full duration, where applicable.</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: addresses and demonstrates a sufficient understanding of most of the requirement or criteria, where applicable.</p> <p>provides sufficient detail and explanation of how most of the requirement or criteria will be delivered, where applicable.</p> <p>shows sufficient ability to meet most of the volumes and timescales for the requirement or criteria, where applicable.</p> <p>provides sufficient information to show how most of the requirement or criteria will be managed with adequate resource allocated and support provided, where applicable.</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: addresses and demonstrates an understanding of some of the elements of the requirement or criteria, where applicable.</p> <p>is weak in some areas and does not fully detail or explain how some elements of the requirement or criteria will be delivered, where applicable.</p> <p>indicates that some of the volumes or timescales for the requirement or criteria will be met but may be lacking detail in some areas, where applicable.</p> <p>provides details of how some of the requirement or criteria will be managed but leaves concerns about the resource and support provided, where applicable.</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: does not address or demonstrate an understanding of most or all of the requirement or criteria, where applicable.</p> <p>does not demonstrate the ability to deliver most or all of the requirement or criteria, where applicable.</p> <p>does not show that most or all of the volumes or timescales of the requirement or criteria will be met, where applicable.</p> <p>does not provide details of how most or all of the requirement or criteria will be managed or that the required resource and support will be provided, where applicable.</p>

comprehensively details how the requirement or criteria will be assured and how all quality or standards expected will be met in full, where applicable. has comprehensively considered risks to delivery of the requirement or criteria and thoroughly explained how they will be eliminated or mitigated, where applicable.	sufficiently details how most of the requirement or criteria will be assured and quality or standards expected will be met, where applicable. has considered risks to delivery of the requirement or criteria and adequately indicated how most will be eliminated or mitigated, where applicable.	provides details of how some of the requirement or criteria will be assured but leaves doubt about quality or standards, where applicable. has considered risks to some of the requirement or criteria but leaves concerns that there are risks that have not been considered or may not be mitigated, where applicable.	does not demonstrate that most or all of the required standards or quality will be met, where applicable. has identified and addressed few or no risks to delivery, where applicable.
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D30. Social value has a lasting impact on individuals, communities, and the environment. Government has a huge opportunity and responsibility to maximise benefits effectively and comprehensively through its commercial activity. It cannot afford not to. A missed opportunity to deliver social value may lead to costs that the taxpayer has to absorb elsewhere through public procurement.

A competitive and diverse supply landscape can help to deliver innovation in public services, manage risk and provide greater value for taxpayers' money.

As a result, the Social Value Model (SVM) has been created which details 5 Themes, 8 Policy Outcomes and 24 Model Award Criteria (MACs). The SVM MACs are questions which relate to Social Value. The use of the SVM is mandatory in all central government procurements using Public Contracting Regulations (PCR) 2015 and Defence and Security Public Contracting Regulations (DSPCR) 2011 above financial threshold and exempt procurements.

Defence is focusing on three, out of the five, priority Social Value themes that are most relevant for Defence:

- o Tackling economic inequality.
- o Fighting climate change; and
- o Equal opportunity.

The Social Value Model Award Criteria and response guidance are listed below. Please use this and the information provided within the SVM to compile your responses to the SVM MAC and Model Evaluation Question (MEQ) asked. In compiling your answer, please refer to the SVM Quick Reference Table. Under Model Response Guidance for tenderers and evaluators examples of types of evidence the tender evaluators are looking for can be found.

D31. Tenderers should note that the reporting metrics included below are lifted from the Cabinet Office mandated template – however social value responses should always be relevant and proportionate to the volume, value and scope of a commercial arrangement. Therefore, while bidders should consider the example reporting metrics below organisations are encouraged and should feel confident in submitting responses that address **how their particular organisation will deliver social value within this particular contract if appointed**, and a suggestion of how this will be reported back to the Authority.

Question	Model Award Criteria	Model Response Guidance for tenderers and evaluators <i>The award criteria (left) and sub-criteria (below) will be used to evaluate the response</i>	Example Reporting Metrics <i>(proposals to be included in bid response)</i>
<p>Using a maximum of [750] words describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Award Criteria. Please include:</p> <ul style="list-style-type: none"> • your 'Method Statement', stating how you will achieve this and how your commitment meets the Award Criteria, and • a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to: timed action plan/ use of metrics/ tools & processes 	<p>MAC 3.5: Demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain.</p>	<p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> • Understanding of risks affecting the contract, including those affecting the market, industry, sector and country (of origin or of source), and to identify the risks and ways of mitigating and managing them. • Measures to mitigate and manage cyber security risks within the supply chain relating to the contract, including: <ul style="list-style-type: none"> ○ engaging with the supply chain to identify and build resilience against cyber security risks ○ actions to be taken to actively raise cyber security awareness. • Commitment to adopting the required technical standards and best practice as a basis for appropriate cyber security controls (appropriate to the contract and risk profile), such as: <ul style="list-style-type: none"> • the '10 Steps To Cyber Security' advocated by the National Cyber Security Centre for establishing a cyber risk management regime. • more stringent cyber security measures in the supply chain where necessary, such as Cyber Essentials and Cyber Essentials Plus certification, and having a specific cyber insurance policy for the contract. 	<p>Number /Percentage of all companies in the supply chain under the contract:</p> <ul style="list-style-type: none"> ■ with a current Cyber Essentials /Plus certification. [where relevant] ■ to have adopted the National Cyber Security Centre's 10 steps. [where relevant]

<p>used to gather data/ reporting/ feedback and improvement/ transparency</p> <ul style="list-style-type: none"> • how you will influence staff, suppliers, customers and communities through the delivery of the contract to support the Policy Outcome, 		<ul style="list-style-type: none"> • NCSC Cloud Security Guidance • NCSC 14 Cloud Security Principles • Technology Code of Practice 	
<p>Using a maximum of [750] words characters describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Model Award Criteria. Please include:</p> <ul style="list-style-type: none"> • your 'Method Statement', stating how you will achieve this and how your commitment meets the Award Criteria, and • a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to: timed action plan/ use of metrics/ tools & processes used to gather data/ reporting/ feedback and improvement/ transparency 	<p>MAC 4.2 Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement.</p>	<p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> • Understanding of how to influence staff, suppliers, customers, communities and/or any other appropriate stakeholders through the delivery of the contract to support environmental protection and improvement. • Activities to reconnect people with the environment and increase awareness of ways to protect and enhance it. <p>Illustrative examples:</p> <ul style="list-style-type: none"> • Engagement to raise awareness of the benefits of the environmental opportunities identified. <ul style="list-style-type: none"> ◦ Co-design/creation. Working collaboratively to devise and deliver solutions to support environmental objectives. • Training and education. Influencing behaviour to reduce waste and use resources more efficiently in the performance of the contract. • Partnering/collaborating in engaging with the community in relation to the performance of the contract, to support environmental objectives. • Volunteering opportunities for the contract workforce, e.g. undertaking activities that encourage direct positive impact. 	<p>Number of people-hours spent protecting and improving the environment under the contract.</p>

<p>Using a maximum of [750] words characters describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Model Award Criteria. Please include:</p> <ul style="list-style-type: none"> • your 'Method Statement', stating how you will achieve this and how your commitment meets the Award Criteria, and • a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to: timed action plan/ use of metrics/ tools & processes used to gather data/ reporting/ feedback and improvement/ transparency 	<p>MAC 6.1 Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce</p>	<p>Activities that demonstrate and describe the tenderer's existing or planned:</p> <ul style="list-style-type: none"> • Understanding of the issues affecting inequality in employment, skills and pay in the market, industry or sector relevant to the contract, and in the tenderer's own organisation and those of its key sub-contractors. • Measures to tackle inequality in employment, skills and pay in the contract workforce. Illustrative examples: <ul style="list-style-type: none"> • Inclusive and accessible recruitment practices, and retention-focussed activities. • Offering a range of quality opportunities with routes of progression if appropriate, e.g. T Level industry placements, students supported into higher level apprenticeships. • Working conditions which promote an inclusive working environment and promote retention and progression. • Demonstrating how working conditions promote an inclusive working environment and promote retention and progression. • A time-bound action plan informed by monitoring to ensure employers have a workforce that proportionately reflects the diversity of the communities in which they operate, at every level. • Including multiple women, or others with protected characteristics, in shortlists for recruitment and promotions. • Using skill-based assessment tasks in recruitment. • Using structured interviews for recruitment and promotions. • Introducing transparency to promotion, pay and reward processes. • Positive action schemes in place to address under-representation in certain pay grades. • Jobs at all levels open to flexible working from day one for all workers. 	<p>Total number/percentage of full-time equivalent (FTE) people from groups under-represented in the workforce employed under the contract, as a proportion of the total FTE contract workforce</p> <p>Total number/percentage of people from groups under-represented in the workforce on apprenticeship schemes / other training schemes under the contract, as a proportion of the all people on apprenticeship schemes/ other training schemes within the contract workforce</p>
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		<ul style="list-style-type: none"> • Collection and publication of retention rates, e.g. for pregnant women and new mothers, or for others with protected characteristics. • Regular equal pay audits conducted 	
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Further Social Value Guidance can be found:

a) Social Value Model (SVM), Government Commercial Function, Edition 1.1 – 3 Dec 20

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940827/Guide-to-using-the-Social-Value-Model-Edn-1.1-3-Dec-20.pdf

b) Guide to Using the Social Value Model, Government Commercial Function, Edition 1.1 – 3 Dec 20

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940826/Social-Value-Model-Edn-1.1-3-Dec-20.pdf

c) Social Value Model Quick Reference Table, Government Commercial Function, Edition 1.1 – 3 Dec 20

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940828/Social-Value-Model-Quick-Reference-Table-Edn-1.1-3-Dec-20.pdf

D32. Evaluation Example Table

The following table provides an example of how Tenders may be evaluated/scored and is for illustrative purposes only. The number of questions and potential points/scores do not necessarily reflect the exact Technical Scores and Scoring Criteria for this particular requirement or how Tenders for this requirement will be evaluated. This example is based on a procurement with 2 pass/fail criteria and 5 scored criteria, each with a minimum threshold of 30, and funding of £250,000.

Figure	Weight	Tender 1 Points	Tender 1 Score	Tender 2 Points	Tender 2 Score	Tender 3 Points	Tender 3 Score	Tender 4 Points	Tender 4 Score
A	N/A	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
B	N/A	Pass	Pass	Fail	Fail	Pass	Pass	Pass	Pass
1	30.00%	100	30.00	100	30.00	100	30.00	70	21.00
2	25.00%	70	17.50	100	25.00	30	7.50	100	25.00
3	18.00%	100	18.00	30	5.40	100	18.00	70	12.60
4	15.00%	100	15.00	0	0.00	100	15.00	100	15.00
5	12.00%	100	12.00	100	12.00	100	12.00	100	12.00
Technical Score			92.50		72.40		82.50		81.10
Technical Compliance			Compliant		Non-Compliant		Compliant		Compliant

Total Price			240,000			215,000			275,000			210,000
Financial Compliance			Compliant			Compliant			Non-Compliant			Compliant

Commercial Compliance			Compliant			Compliant			Compliant			Compliant
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Evaluation Score			2594.59			0.00			0.00			2589.40
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In this example, Tender 2 was non-compliant as it did not meet the minimum threshold for Technical Criteria B and 4. Tender 3 was as non-compliant as the Total Price exceeded the funding available. Tender 4 is the Winning Tenderer, as it had the lowest Evaluation Score (combining price and technical score) and was compliant for all Commercial, Financial and Technical criteria.

Section E – Instructions on Submitting Tenders

Submission of your Tender

E1. Your Tender and any ITT Documentation must be submitted electronically via the Defence Sourcing Portal (DSP) by the date stated in the cover page to this ITT. The Authority reserves the right to reject any Tender received after the stated date and time. Hard copy, paper or delivered digital Tenders (e.g. email, DVD) at OFFICIAL SENSITIVE classification are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender response to ITT.

E2. Your priced Tender and priced ITT Documentation must only be submitted to the commercial envelope of the DSP ITT. You must ensure that there are no prices present in the technical or qualification (if applicable) envelopes of the DSP ITT. The Authority has the right to request, at its discretion, that any pricing information found in the technical or qualification (if applicable) envelopes is redacted in accordance with paragraph E3.

E3. The Authority may, in its own absolute discretion allow the Tenderer to rectify any irregularities identified in the Tender by the Authority or provide clarification after the Tender return date. For example, this may include, but is not limited to, redacting pricing information in the technical or qualification (if applicable) envelopes, rectifying, or providing clarification in relation to a corrupt or blank document. Tenderers will be provided with instructions via the DSP on how they can correct such irregularities which must be completed by the deadline set. The Authority will cross reference the amended Tender with the original Tender submitted to the DSP before the Tender return date to ensure that no other amendments, other than in relation to the specific irregularity/clarification communicated by the Authority, have been made. Should Tenderers make additional amendments to the Tender other than those relating to the specific irregularity/clarification communicated to the Tenderer by the Authority, this will result in a noncompliant bid.

E4. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please contact the Commercial Officer stated in the cover page to this ITT if you have a requirement to submit documents above OFFICIAL SENSITIVE

E5. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the DSP. You must contact the Commercial Officer stated in the cover page to this ITT to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority.

E6. You must ensure that your DEFFORM 47 Annex A is signed, scanned and uploaded to DSP with your Tender as a PDF (it must be a scanned original). The remainder of your Tender must be compatible with MS Word and other MS Office applications.

Lots

E7. This requirement has not been split into lots.

Variant Bids

E8. The Authority will not accept variant bids.

Samples

E9. Samples are not required.

Section F – Conditions of Tendering

F1. The issue of ITT Documentation or ITT Material is not a commitment by the Authority to place a Contract as a result of this competition or at a later stage. Neither does the issue of this ITT or subsequent Tender submission create any implied Contract between the Authority and any Tenderer and any such implied Contract is expressly excluded.

F2. The Authority reserves the right, but is not obliged to:

- a. vary the terms of this ITT in accordance with applicable law;
- b. seek clarification or additional documents in respect of a Tenderer's submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly;
- c. visit your site;
- d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT;
- e. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic PQQ or the tender process;
- f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the PQQ response, see paragraphs A31 to A34;
- g. withdraw this ITT at any time, or choose not to award any Contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis;
- h. re-issue this ITT on a single source basis, in the event that this procurement does not result in a 'competitive process' as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014;
- i. choose not to award any Contract as a result of the current tender process;
- j. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low;

F3. The Contract will be effective when both parties sign the Contract. The Contract will be issued by the Authority via a DEFFORM 8, to the address you provide, on or before the end of the validity period specified in paragraph C3.

Conforming to the Law

F4. You must comply with all applicable UK legislation and any equivalent legislation in a third state.

F5. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender will be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

Bid Rigging and Other Illegal Practices

F6. You must report any suspected or actual bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tendering exercise to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

Conflicts of Interest

F7. Any attempt by Tenderers or their advisors to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:

- devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
- enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
- enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
- canvass the Authority or any employees or agents of the Authority in relation to this procurement; or
- attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender.

F8. Where you have provided advice to the Authority in relation to this procurement procedure or otherwise have been or are involved in any way in the preparation or conduct of this procurement procedure or where any other actual or potential Conflict of Interest (COI) exists, arises or may arise or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must notify the Authority immediately.

F9. Where an actual or potential COI exists or arises or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must provide a proposed Compliance Regime within seven (7) calendar days of notifying the Authority of the actual, potential or perceived COI. The proposal must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition and provides full details listed at F9 a to g below. Where the Contract is awarded and the COI is still relevant post-Contract award decision, your proposed Compliance Regime will become part of the Contract Terms and Conditions. As a minimum, the Compliance Regime must include:

- a. the manner of operation and management;
- b. roles and responsibilities;
- c. standards for integrity and fair dealing;
- d. levels of access to and protection of competitors' sensitive information and Government Furnished Information;
- e. confidentiality and/or non-disclosure agreements (e.g. DEFFORM 702);
- f. the Authority's rights of audit; and
- g. physical and managerial separation.

F10. Tenderers are ultimately responsible for ensuring that no COI exist between the Tenderer and its advisors, and the Authority and its advisors. Any Tenderer who fails to comply with this requirement (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) may be disqualified from the procurement at the discretion of the Authority.

Government Furnished Assets

F11. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If unsuccessful in this competition, you must seek instructions for the GFA from the named Commercial Officer.

Standstill Period

F12. The Authority is allowing a space of ten (10) calendar days between the date of dispatch of the electronic notice of its decision to award a Contract to the successful Tenderer before entering into a Contract, known as the standstill period. The standstill period ends at 23:59 on the 10th day after the date the DEFFORM 158s are sent. If the 10th day is not a business day, the standstill period ends at 23:59 of the next business day.

Publicity Announcement

F13. If you wish to make an announcement regarding this procurement, you must seek approval from the named Commercial Officer and Press Office and such permission will only be given at the sole discretion of the Authority. Requests must be made in writing to the named Commercial Officer and a copy of the draft announcement provided. This shall then be forwarded to the Press Office and their contact details will be provided for further follow up.

F14. Under no circumstances should you confirm to any Third Party the Authority's Contract award decision before the Authority's announcement of the award of Contract.

Sensitive Information

F15. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom of Information requests.

F16. For these purposes, the Authority may share within Government any of the Tenderers documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the Authority during this procurement. Tenderers taking part in this competition must identify any Sensitive Information in the DEFFORM 539A (or SC1B Schedule 4 or SC2 Schedule 5) and consent to these terms as part of the competition process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F17. Where required, the Authority will disclose on a confidential basis any information it receives from Tenderers during the tender process (including information identified by the Tenderer as Sensitive Information in accordance with the provisions of this ITT) to any Third Party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.

Reportable Requirements

F18. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you must attach the relevant information with the tender submission.

F19. Your Tender will be deemed non-compliant and excluded from the tender process if you fail to complete the Annex in full and attach relevant information where required.

Specific Conditions of Tendering

F20.

Save as set out in PPN 01/22, the Authority will not be accepting Tenders that:

- a. contain any Russian/Belarusian products and / or services; and/or
- b. are 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:

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

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

Tenderers must confirm in writing that their Tender, including any element that may be provided by any part of the Contractor's supply chain, does not contain any Russian/Belarusian products and/or services.

Tenderers must include provisions equivalent to those set out in this clause in all relevant Sub-Contracting Arrangements.

Ministry of Defence

Tender Submission Document (Offer) – Ref Number [ITT -]

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 and ITT Material, 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 Terms & Conditions or any amendments issued by the Authority shall apply.

Applicable Law				
I agree that any Contract resulting from this competition shall be subject to English Law				Yes / No
Total Value of Tender (excluding VAT)				
£				
WORDS				
UK Value Added Tax				
If registered for Value Added Tax purposes, insert:				
a. Registration No				
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....				
Location of work (town / city) where Contract will be performed by Prime:				
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
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			Tenderer's Declaration	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, complete and attach DEFFORM 528.			Yes* / No	
Have you completed and attached a DEFFORM 711 – Notification of Intellectual			Yes* / No	
Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract Terms & 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 a Supplier Assurance Questionnaire on the Supplier Cyber Protection Service?			Yes* / No / N/A	
Have you completed Form 1686 for Sub-Contracts?			Yes* / No	
Have you completed the compliance matrix / matrices?			Yes / No / N/A	

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 Sensitive Information Form?	Yes* / No
If you have not previously submitted a Statement Relating to Good Standing within the last 12 months, or circumstances have changed have you attached a revised version?	Yes* / No / N/A
Do the Contractor Deliverables, or any item provided in accordance with the Terms and Conditions of the Contract 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 or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly	Yes* / No
Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer?	Yes / No / Not Required
Have you complied with the requirements of the Defence Safety Authority Regulatory Articles?	Yes / No / Not Required
Have you completed all Mandatory Requirements (as per paragraph F18) stated in this ITT?	Yes / No
*If selecting Yes to any of the above questions, attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	
Tenderer's Declaration of Compliance with Competition Law	
<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 tender processes, including value for money and related purposes. We certify that we have identified any Sensitive Information in the Tenderer's Sensitive Information Form (DEFFORM 539A).</p>	
Dated this.....day ofYear.....	
Signature:	In the capacity of
(Must be scanned original)	(State official position e.g. Director, Manager, Secretary etc.)

Name: (in BLOCK CAPITALS) duly authorised to sign this Tender for and on behalf of: (Tenderer's Name)	Postal Address: Telephone No: Registered Company Number: Dunn And Bradstreet number:
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Information on Mandatory Declarations

IPR Restrictions

1. You must complete and attach DEFFORM 711 (Notification of Intellectual Property Rights (IPR) Restrictions) as part of your Tender. You must provide details of any information / technical data that is deliverable or delivered under the Contract where it is, or may be, subject to any IPR restrictions (or any other type of restriction which may include export restrictions) affecting the Authority's ability to use or disclose the Information / technical data in accordance with the conditions of any resulting Contract. You must also identify any Contractor Deliverables subject to IPR which have been funded exclusively or in part by private venture, foreign investment or otherwise than by the Authority.

2. In particular, you must identify:

a. any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by, or on behalf of, the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered Design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a Third Party;

b. any allegation made against you, whether by claim or otherwise, of an infringement of Intellectual Property Rights (whether a Patent, Registered Design, unregistered Design Right, Copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant Contract or subsequent use by or for the Authority of any Contractor Deliverables;

c. the nature of any allegation referred to under sub-paragraph 2.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information; and / or

d. any action you need to take, or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 2.b.

3. You must provide the Authority with details of every restriction and obligation referred to in paragraphs 1 and 2. The Authority will not acknowledge any such restriction unless so notified using DEFFORM 711 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.

4. You should refer to the DEFFORM 711 Explanatory Notes for further information on how to complete the form.

Notification of Foreign Export Control Restrictions

5. If, in the performance of the Contract, you need 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, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.

6. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant Contract, you must provide the following information in your Tender:

Whether all or part of any Contractor Deliverables are or will be subject to:

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

b. any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 6 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

7. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 6. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.

8. This does not include any Intellectual Property specific restrictions mentioned in paragraph 2.

9. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 6.

10. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the Contract.

Import Duty

11. United Kingdom (UK) legislation permits the use of various procedures to suspend customs duties.

12. For the purpose of this competition, for any deliverables not yet imported into the UK, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and/or suspended

13. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate His Majesty's Revenue & Customs (HMRC) authorisations.

Cyber Risk

14. Cyber risk has been considered and in accordance with the Cyber Security Model resulted in a Cyber Risk Profile of "Moderate". The Risk Assessment Reference is RAR-SA7VTSQU7. Tenderers are required to complete the Suppliers Assurance Questionnaire and submit this as part of their Tender response, together with a Cyber Security Implementation Plan as appropriate.

Sub-Contracts Form 1686

15. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice

Centre. Form 1686 and further guidance can be found in the Cabinet Office's [Contractual Process](#).

Small and Medium Enterprises

16. The Authority is committed to supporting the Government's Small and Medium-sized Enterprise (SME) policy, and we want to encourage wider SME participation throughout our supply chain. Our goal is that 25% of the Authority's spending should be spent with SMEs by 2022; this applies to the money which the Authority spends directly with SMEs and through the supply chain. The Authority uses the European Commission definition of SME.

17. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their Sub-Contractors are encouraged to make their own commitment and register with the <https://www.smallbusinesscommissioner.gov.uk/ppc/>.

18. Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative, however this is not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation. Information on the Authority's purchasing arrangements, our commercial policies and our SME Action Plan can be found at [Gov.UK](#) and the DSP.

19. The opportunity also exists for Tenderers to advertise any Sub-Contract valued at over £10,000 on the Defence Sourcing Portal and further details can be obtained directly from: <https://www.gov.uk/guidance/subcontract-advertising>. This process is managed by the Strategic Supplier Management team who can be contacted at: DefComrcISSM-Suppliers@mod.gov.uk.

Transparency, Freedom Information and Environmental Information Regulations

20. The Authority shall publish notification of the Contract and publish Contract documents where required following a request 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 between suppliers.

21. The Authority may publish the contents of any resultant Contract in line with government policy set out in the Government's [Transparency Principles](#) and in accordance with the provisions of either DEFCON 539, SC1B Conditions of Contract Clause 5 or SC2 Conditions of Contract Clause 12.

22. Before publishing the Contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2004 ("the EIR").

23. You must complete the attached Tenderer's Sensitive Information Form (DEFFORM 539A, SC1B Schedule 4 or SC2 Schedule 5) explaining which parts of your Tender you consider to be Sensitive Information (as defined in DEFCON 539). This includes providing a named individual who can be contacted with regard to FOIA and EIR.

24. You should note that while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

Electronic Purchasing

25. Tenderers must note that use of the [Contracting, Purchasing and Finance \(CP&F\)](#) electronic procurement tool is a mandatory requirement for any resultant Contract awarded

following this Tender. By submitting this Tender, you agree to electronic payment. You may consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant and excluded from the tender process.

Change of Circumstances

26. In accordance with paragraph A31, if your circumstances have changed, please select 'Yes' to the appropriate question on DEFFORM 47 Annex A and submit a Statement Relating to Good Standing with your Tender.

Asbestos, Hazardous Items and Depletion of the Ozone Layer

27. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' to the appropriate question on DEFFORM 47 Annex A and provide further details in your Tender.

Defence Safety Authority (DSA) Requirements

28. There are no DSA Requirements.

Bank or Parent Company Guarantee

29. You will be informed whether you are required to provide a Bank or Parent Company Guarantee. In the event that you are selected as the winning Tenderer, you must provide your Bank or Parent Company Guarantee (in the form of DEFFORM 24/24A as appropriate) during the standstill period. No Contract will be awarded until a suitable Bank or Parent Company Guarantee, as appropriate, is in place. Failure to provide a Bank or Parent Company Guarantee during the standstill period, will result in you being de-selected as the winning Tenderer. The Authority reserves the right to re-evaluate the Tenders, (if necessary) to take into account the absence of the de-selected Tenderer, enabling the Authority to establish the next winning Tenderer and award a Contract.

Schedule 1 - Definitions of Contract

Article	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;
Articles	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. (This definition only applies when DEFCONs are added to these Conditions);
Authority	means the Secretary of State for Defence acting on behalf of the Crown;
Authority's Representative(s)	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of Condition 7;
Business Day	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
Central Government Body	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none">a. Government Department;b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c. Non-Ministerial Department; ord. 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.
Contractor	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;
Contractor Deliverables	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;
Control	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none">a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; orb. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor; <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>
CPET	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;
Crown Use	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
Dangerous Goods	<p>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:</p> <ul style="list-style-type: none">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;

	<ul style="list-style-type: none"> 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.aof.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;
Delivery Date	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;
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;
Diversion Order	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
Effective Date of Contract	means the date upon which both Parties have signed the Contract;
Evidence	<p>means either:</p> <ul style="list-style-type: none"> a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
Firm Price	means a price (excluding VAT) which is not subject to variation;
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Government Furnished Assets (GFA)	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;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the

event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

Independent Verification means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "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);

Mixture means a mixture or solution composed of two or more substances;

MPAS Registered Organisation is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;

MPAS Certificated Designer shall mean an experienced Packaging designer trained and certified to MPAS requirements;

NATO means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;

Notices shall mean all Notices, orders, or other forms of

	communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Plastic Packaging	shall have the same meaning as set out in Part 2 of the Finance Components Act 2021 together with any associated secondary legislation;
PPT	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 Schedules 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: <ul style="list-style-type: none"> 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;
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;
STANAG 4329	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.

Annex A to Schedule 1 – Additional Definitions of Contract iaw. Conditions 45 - 47 (Additional Conditions)

As detailed in Statement of Requirements.

Schedule 2 - Schedule of Requirements

Deliverables in accordance with Statement of Requirements						
Item Number	Description	Delivery Date	Unit of Measurement	Quantity	Firm Price (£) Ex VAT – Per Individual Test	Firm Price (£) Ex VAT -Total (using estimated quantities provided at Schedule 10)
1	Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Navy and Royal Marines as outlined in the Statement of Requirements – YEAR 1 <i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i>	RN/RM Year 1 – 01 April 2023 to 31 March 2024	Per Year	1		
2	Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Air Force and Royal Air Force Reserves as outlined in the Statement of Requirements – YEAR 1 <i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i>	RAF/Reserves Year 1 – 01 April 2023 to 31 March 2024	Per Year	1		
3	Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Navy and Royal Marines as outlined in the Statement of Requirements – YEAR 2 <i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i>	RN/RM Year 2 – 01 April 2024 to 31 March 2025	Per Year	1		
4	Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Air Force and Royal Air Force Reserves as outlined in the Statement of Requirements – YEAR 2 <i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i>	RAF/Reserves Year 2 – 01 April 2024 to 31 March 2025	Per Year	1		

5	<p>OPTION 1: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Navy and Royal Marines as outlined in the Statement of Requirements – YEAR 3</p> <p><i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i></p>	<p>OPTION 1: Year 3 – 01 April 2025 to 31 March 2026</p>	Per Year	1		
6	<p>OPTION 2: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Air Force and Royal Air Force Reserves as outlined in the Statement of Requirements- YEAR 3</p> <p><i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i></p>	<p>OPTION 2: Year 3 – 01 April 2025 to 31 March 2026</p>	Per Year	1		
7	<p>OPTION 3: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Navy and Royal Marines as outlined in the Statement of Requirements – YEAR 4</p> <p><i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i></p>	<p>OPTION 3: Year 4 – 01 April 2026 to 31 March 2027</p>	Per Year	1		
8	<p>OPTION 4: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Air Force and Royal Air Force Reserves as outlined in the Statement of Requirements – YEAR 4</p> <p><i>Provide a price for an individual test and a price per annum using the estimated quantities provided at Schedule 10.</i></p>	<p>OPTION 4: Year 4 – 01 April 2026 to 31 March 2027</p>	Per Year	1		
					Contract Value Total Price excluding options	
					Contract Value Total Price inclusive of options	

Item Number	Consignee Address (XY code only)
1-8	UK-wide geographical coverage required as articulated in the Statement of Requirement.
Item Number	Payment Schedule
1-8	Payment to be made following successful delivery of each item – to be invoiced monthly in arrears. Payment schedule to be agreed at contract award.

Exact delivery dates will be dependent on date of signing contract and will be confirmed on contract award.

All prices stated are firm prices, to be paid in £ (GBP/Pounding Sterling), not subject to any increase or exchange rates.

The quantity of each item are expected numbers and not a guarantee of amounts required or due. Quantities ordered under the contract may be higher or lower based on Authority requirements during the contract period.

The Firm Price set for each item shall be the total maximum price the Contractor shall charge for the delivery of the goods/services covered within that item. This shall include, but not be limited to:

- Any direct or indirect costs
- Any labour costs or personnel salaries, pensions or contributions
- Any costs for manufacture or provision of goods/services
- Any costs for delivery to the Authority
- Any fuel costs
- Any related travel and subsistence
- Any packaging
- Any import costs or charges
- Any implementation or exit costs
- Any sub-contractor costs
- Any IT or system related costs
- Any costs required to provide Authority access to systems or accounts

Schedule 3 - Contract Data Sheet

General Conditions

Condition 2 – Duration of Contract:

The Contract expiry date shall be: TBC

Condition 4 – Governing Law:

Contract to be governed and construed in accordance with:

English Law ☒

Scots Law ☐ clause 4.d shall apply

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:

Condition 8 – Authority's Representatives:

The Authority's Representatives for the Contract are as follows:

Commercial: Commercial Officer as per Appendix - Addresses and Other Information

Project Manager: as per Appendix - Addresses and Other Information

Condition 19 – Notices:

Notices served under the Contract shall be sent to the following address:

Authority: Commercial Officer

Contractor: Contract Manager

Notices can be sent by electronic mail? ☒

Condition 20.a – Progress Meetings:

The Contractor shall be required to attend the following meetings:

To be arranged if and when required unless already detailed in Statement of Requirements.

Condition 20.b – Progress Reports:

The Contractor is required to submit the following Reports:

To be arranged if and when required unless already detailed in Statement of Requirements.

Supply of Contractor Deliverables**Condition 20 – Quality Assurance:**

Is a Deliverable Quality Plan required for this Contract? ☐

If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

Other Quality Assurance Requirements:**Condition 21 – Marking of Contractor Deliverables:**

Special Marking requirements:

N/A

Condition 24 - Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables:

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:

- a) The Authority's Representative (Commercial)
- b) Defence Safety Authority – DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk

to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date:

Condition 25 – Timber and Wood-Derived Products:

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)

to be Delivered by the following date:

Condition 26 – Certificate of Conformity:

Is a Certificate of Conformity required for this Contract? ☐

Applicable to Line Items:

If required, does the Contractor Deliverables require traceability throughout the supply chain? ☐
(tick as appropriate)

Applicable to Line Items:

Condition 28.b – Delivery by the Contractor:

The following Line Items are to be Delivered by the Contractor:

All lines in Schedule 2 - Schedule of Requirements

Special Delivery Instructions:

Condition 28.c - Collection by the Authority:

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

None

Special Delivery Instructions:

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

Line Items: Address:

Line Items: Address:

Consignee details (in accordance with condition 23):

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 Business Days.

Condition 32 – Self-to-Self Delivery:

Self-to-Self Delivery required? ☐ (tick as appropriate)

If required, Delivery address applicable:

Pricing and Payment**Condition 35 – Contract Price:**

All Schedule 2 line items shall be FIRM Price other than those stated below:

Line Items Clause 46. refers

Termination**Condition 42 – Termination for Convenience:**

The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:

The Notice period for termination shall be Business Days

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

See Annex A to Schedule 3 (DEFFORM 111)

Appendix - Addresses and Other Information

1. Commercial Officer:

Name: Katie Goble

Address: MP1.1, NCHQ, Leach Building, Whale Island, Portsmouth,
PO2 8BY

Email: katie.goble100@mod.gov.uk

☎ 03001575849

8. Public Accounting Authority:

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

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

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

Name:

Address

Email



9. Consignment Instructions:

The items are to be consigned as follows:

As detailed in Schedule of Requirements

3. Packaging Design Authority:

Organisation and 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:

As per box 2



(b) U.I.N.

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 ☎ 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk in the first instance

5. Drawings/Specifications are available from:

6. Intentionally Left Blank

7. Quality Assurance Representative:

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

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

11. The Invoice Paying Authority:

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

Website is:

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

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management
PO Box 2, Building C16, C Site

Lower Arncott

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

Applications via fax or email: 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 Intranet site requests should be submitted through the Commercial Officer named in Section 1.

Schedule 4 - Contract Change Control Procedure (i.a.w. clause 6.b)

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 DEFFORM 10B in accordance with Condition 6 (Formal Amendments to the Contract), whereupon the Contractor shall promptly sign and return to the Authority the 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 11.a 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 13)**

Contract Number:

Description of Contractor's Commercially Sensitive Information:

Cross Reference(s) to location of sensitive information:

Explanation of Sensitivity:

Details of potential harm resulting from disclosure:

Period of Confidence (if applicable)

Contact Details for Transparency / Freedom of Information matters:

Name:

Position:

Address:

Telephone Number:

Email Address:

Schedule 6 - Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract (i.a.w. Condition 24): Data Requirements

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

Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract: Data Requirements

The following information is provided in respect of condition 25 (Timber and Wood-Derived Products):

[illegible]

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

There are no specific acceptance procedures for this contract other than that stated in condition 28 and 46,

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

KPI's not currently due for publishing as contract value currently below threshold for publishing. Should the threshold for publishing change during the duration of the contract this table will be updated and KPI's will be published.

KPI Description*	Rating Thresholds	Frequency of Measurement	Quarter and Year*	Average for Reporting Period	Rating*	Comment*
	Good*:					
	Approaching Target:					
	Requires Improvement:					
	Inadequate:					
	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 – Statement of Requirements

SCHEDULE 10.1 – STATEMENT OF REQUIREMENT (SOR) – Overall Requirement

Introduction

Part One

1. The Authority has a requirement for Civilian Fitness Centres (CFCs) to conduct a standard Pre-Joining Fitness Test (PJFT) for applicants wishing to join the Royal Navy, Royal Air Force and Royal Air Force Reserves. A new test focused on strength as well as fitness will be referred to as the PJFT Plus (PJFT+) and will be used by the Royal Marines.
2. A combination of sub-maximal assessment and the lessons identified during the virtual Pre-Joining Fitness Test Plus delivery and Recruit Orientation Phase, combined with the generational change of the current and foreseeable RM candidate inflow, has resulted in a clear need for change of the RM recruit physical assessment prior to undertaking recruit training. The Dept of the Corps Colonel (DoCC) has acted upon clear direction from the Inspector of Royal Marines Physical Training. Of note, RN (Diver) candidates will also conduct the PJFT+.
3. Armed Forces Careers Offices (AFCOs)¹ shall refer the applicants to the CFCs. It is essential that UK Nationwide coverage is provided to meet the whole of the requirement.
No applicant shall have to travel more than 1 hour, by public transport, from their nearest train or Bus station in order to be tested.
4. The estimated quantities based on historical evidence for the Royal Navy, Royal Marine, Royal Air Force and Royal Air Force Reserves are as follows:
 - a. RN 7000 tests annually.
 - b. RM has 4000 tests annually.
 - c. RAF and RAF Reserves has 7,500 tests annually.
5. The CFC shall be responsible for ensuring that the test is conducted in accordance with relevant Health and Safety legislation ensuring that all applicants are supervised at all times by a qualified fitness instructor who holds a Level 2 Gym qualification. The Fitness Centre must be responsible for provision of first aid and be in possession of valid public liability insurance cover. The Fitness Centre running the tests will hold a CIMSPA (The Chartered Institute for the Management of Sport and Physical Activity) accreditation or equivalent.
6. Applicants referred to the CFCs may not have attended a RN/RM/RAF/RAF Reserves pre-entry medical examination prior to their referral for the PJFT+, though they will have passed medical triage. CFCs will be required to conduct their own health

¹ AFCO is a generic term that references any Naval Recruitment Careers Office

questionnaires. Candidates will range in age from fifteen years nine months to thirty-four years; however, older candidates may occasionally require testing.

7. The standard RN test is detailed in BR 3(1) Pt 4 (BRD3 1) and in accordance with the precise specifications laid down by the RN in Recruitment and Attraction (R&A). The Authority will notify the provider of changes to these documents. The RAF/RAF Reserves tests will be specific to the applicant and test standards will be contained in the letter which the applicant will take to the CFC.
8. There have been well publicised events concerning Exercise Collapse Associated with Sickie Cell Trait (ECAST) which have had tragic consequences. Royal Navy/Royal Air Force policy is to NOT conduct maximal testing of Candidates or recruits until the recruit has conducted a professionally managed 4-week physical conditioning programme. This means that the candidate undergoing the Royal Navy and Royal Air Force PJFT is monitored individually to ensure the candidate does not over-exert themselves and the Royal Navy Fitness Test (RNFT) is not conducted until the recruit has completed the 4-week conditioning programme and has no known medical issues.
9. The CFC must provide the following services:
 - a. Receive telephone calls from individual applicants or Designated Officers (DO) and book a specific mutually agreed time for test, which may include evenings and/or weekends.
 - b. Provide the applicant with directions to the Centre (verbally and by letter or e-mail if required) and advise on appropriate dress for test.
 - c. Conduct the fitness test (in accordance with the precise specification laid down by the RN, RM² and RAF).
 - d. Undertake the following procedure, which must be supervised by a Qualified Personal Trainer (QPT) and that you will always have a qualified Physical Trainer available to do either of the tests:
 - (1) Provide changing facilities and secure stowage for personal possessions.
 - (2) Measure and record height and weight in metric units (cm and kg).
 - (3) Provide a brief on the equipment to be used.
 - (4) Explain the test procedure.
 - (5) Supervise warm-up.
 - (6) Advise Candidates, by demonstration and practice, to ensure correct form.
 - (7) Conduct test providing advice on technique during the test.
 - (8) Supervise warm-down.

² Links to technique videos provided with the document.

- (9) Provide showering facilities and drinking water as required.
 - (10) Report individual results to appropriate AFCO via e- mail/post and provide the candidate with a copy of results.
 - (11) Provide a monthly list of all those applicants tested, together with their results, to the appropriate AFCO.
 - (12) If candidates from more than one AFCO attend the same Gym, then the Gym will submit separate lists to each AFCO.
 - (13) Provide candidates with a minimum of 3 practice sessions at nil cost.
10. During the performance of the Contract, CFCs providing the PJFT/PJFT+ may be visited on a random basis by Recruitment and Attraction Staff from the Royal Navy and Recruitment Force from the Royal Air Force or their representatives, to ensure that the facilities and the procedures set out are being maintained.
 11. A Quality Assurance programme should be implemented that audits staff performance on a monthly basis and CFCs annually to provide the authority with a formal written report at biannual contract reviews.
 12. CFCs providing the PJFT/PJFT+ are to book the candidate test within 14 calendar days of receiving their phone call.
 13. Results of the candidate test are to be recorded (emailed) back to the appropriate AFCO within 1 working day of the test being completed.
 14. Management Information (MI) must be provided to the authority on a monthly basis, detailing numbers of tests undertaken by location; pass and failure rates; number of practice sessions total, by candidate and by location; Quality Assurance undertaken in the preceding month and unscheduled unavailability during reporting period, as a minimum.
 15. The required delivery schedule for the provision of Pre-Joining Fitness tests for Royal Navy, Royal Marines and Royal Air Force will be as follows:

Item	Deliverable	Anticipated Delivery Dates
1	Provision of Pre-Joining Fitness Test for Royal Navy, Royal Marine and Royal Air Force Personnel Year 1 (2023)	01 Apr 2023 to 31 Mar 2024
2	Provision of Pre-Joining Fitness Test for Royal Navy, Royal Marine and Royal Air Force Personnel Year 2 (2024)	01 Apr 2024 to 31 Mar 2025
3	OPTION 1 - Provision of Pre-Joining Fitness Test for Royal Navy, Royal Marine and Royal Air Force Personnel – 12 month's provision	01 Apr 2025 to 31 Mar 2026

4	OPTION 2 - Provision of Pre-Joining Fitness Test for Royal Navy, Royal Marine and Royal Air Force Personnel – 12 month's provision	01 Apr 2026 to 31 Mar 2027
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SCHEDULE 10.2 – Royal Navy, Royal Marines and Maritime Reserves SOR

1. The Authority, Recruitment and Attraction (R&A), has a requirement for Civilian Fitness Centre's (CFC) to conduct a standard Pre-Joining Fitness Test (PJFT) for applicants wishing to join the Naval Service (NS) which includes the Royal Navy (RN) and Maritime Reserves (MR). A new test will be referred to as the PJFT Plus (PJFT+) and will be used by the Royal Marines (RM) and RN (Diver) candidates. Armed Forces Careers Offices (AFCO) shall refer the applicants to the CFC. It is essential that UK Nationwide coverage is provided to meet the whole of the requirement.
2. No candidate shall have to travel more than 1-hour, by public transport, from their nearest train station or bus station in order to be tested. Where possible, if a candidate has a PJFT CFC which is closer to their registered home address, but further than 1 hour from their nominated AFCO then this CFC should be used to help to reduce the candidates travelling time. A list of Armed Forces Careers Offices details are contained in Annex A and gives an indication of the geographical coverage of CFC required.
3. The estimated quantities based on historical evidence for the RN and RM is as follows:
 - a. RN has 7000 tests annually.
 - b. RM has 4000 tests annually.
4. The CFC shall be responsible for ensuring that the test is conducted in accordance with relevant Health and Safety at work Act 1974 legislation ensuring that all applicants are supervised at all times by a qualified fitness instructor of a minimum of Gym Level 2. The CFC must be responsible for provision of first aid and be in possession of valid public liability insurance cover. Applicants referred to the CFC must have attended a RN pre-entry medical examination prior to their referral for the PJFT/PJFT+. CFCs will be required to conduct their own health assessment via a questionnaire. Candidates will range in age from fifteen years nine months to thirty-four years; however, older candidates may occasionally require testing. The standard RN and RM tests are in accordance with the precise specifications laid down by the RN The Authority will notify the provider of changes to this.
5. It is critical that all physical fitness assessments of a candidate (pre-joining and therefore an unconditioned civilian) or a new recruit (serving person but not yet completed professionally managed 4 week physical conditioning programme) are sub-maximal and fully supervised by PT staff to minimise the risk of any adverse health effects, for example ECAST, being suffered by a person not yet prepared for the level of physical exertion required to be successful in any Service fitness assessment or test.
6. The CFC must provide the following capabilities:
 - a. Receive telephone calls from individual applicants Careers Advisers (CA) or Designated Officers (DO) and book a specific mutually agreed time for test, which may include evenings and/or weekends.
 - b. Provide the applicant with directions to the CFC (verbally and by letter or e-mail if required) and advise on appropriate dress and preparation for the test.

- c. Conduct the fitness test (in accordance with the precise specification and technique video links laid down by the NS).
- d. Undertake the following procedure, which must be supervised by a Qualified Personal Trainer (QPT):
 - (1) Provide changing facilities and secure stowage for personal possessions.
 - (2) Measure and record height and weight in metric units (kg and cm).
 - (3) Provide a brief on the equipment to be used.
 - (4) Explain the test procedure.
 - (5) Supervise warm-up.
 - (6) Ensure via demonstration and practice candidate can perform exercises to correct form.
 - (7) Conduct test and if required provide advice on technique during the test.
 - (8) Supervise warm-down.
 - (9) Provide showering facilities and drinking water as required.
 - (10) Report individual results to appropriate AFCO via e- mail/post and provide the candidate with a copy of results.
 - (11) Provide a monthly list of all those applicants tested, together with their results, to the appropriate AFCO.
 - (12) If candidates from more than one AFCO attend the same Gym, then the Gym will have to submit separate result lists.
 - (13) Provide candidates with a minimum of 3 practice passes at nil cost.
- 7. During the performance of the Contract, CFCs providing the PJFT/PJFT+ may be visited on a random basis by R&A Staff or their representatives to ensure that the facilities and the procedures set out are being maintained. A Quality Assurance programme should be implemented that audits staff performance on a monthly basis and CFC annually to provide the Authority with a formal written report at bi-annual contract reviews.
- 8. Management Information must be provided monthly to the Authority, detailing numbers of tests undertaken by location; pass and failure rates; number of practice sessions total, by candidate and by location; Quality Assurance undertaken in the preceding month and unscheduled unavailability during reporting period as a minimum.

NAVAL SERVICE CANDIDATES' REQUIREMENT

- 9. Conduct the fitness test to the standards described below and in accordance with the precise specifications and video links laid down by the RN. The authority will notify the provider of changes to these RN Standards.

10. Provide initial induction training to staff - including supporting training documentation detailing the standards and specifications and refresher training on no less than an annual basis. Provide all QPT with written instructions for the conduct of the test.
11. For details of the individual test requirements please refer to Correct Form.

THE QUALIFIED PERSONAL TRAINER ROLE

12. The QPT are required to confirm the identity of the candidate, brief them, conduct the test, and complete the results certificate in accordance with the instructions below and contained at the proforma.

Conduct

13. The protocols and conduct of the RN/RM PJFT/PJFT+ are as follows:

- a. To conduct the **RN** PJFT which is a 2.4km “pace, pass, stop” run on a running machine **set to the pace required to achieve your PJFT pass appropriate to your age and gender**. Candidate should aim to achieve the required pass while being monitored by the QPT to ensure they do not over-exert.

The protocols and conduct of the **RM** PJFT+ are as follows:

https://www.youtube.com/playlist?list=PLIN4KXxIMbCUhXjkvdolQI9YPJP_bOCN1 to access following content

- (1) PJFT+ Warm Up.
 - (2) Burpees – Exercise explanation and demonstration
 - (3) Sit-ups – Exercise explanation and demonstration
 - (4) Press-ups – Exercise explanation and demonstration
 - (5) Plank – Exercise explanation and demonstration
 - (6) PJFT+ Circuit Audio (OR 3 sets and Officer 4)
 - (7) Pull-ups – Exercise explanation and demonstration
 - (8) Pull-Ups – Audio track
- b. The QPT must be appropriately qualified and fully conversant with the controls of the running machine.
- c. First Aid must be available in case of an emergency or accident.
- d. The QPT may supervise only one person at any one time. They may not stand between machines monitoring 2 or more candidates simultaneously and must always remain in attendance throughout the test.
- e. The candidate is to be given a comprehensive brief on how to use the running machine, demonstrating start, stop and speed increase and decrease. There is to be a practical demonstration should the applicant be unfamiliar to running on machines.
- f. The candidate is to be given a thorough warm up and stretch, by the QPT, prior to commencing the test.

- g. The candidate is to control all settings on the running machine, speeding up and slowing down as required. The candidate is to be made fully aware of how the distance and pace are measured on the machine's display and the QPT is **not** authorised to offer them verbal reminders of their present pace, distance covered and target time etc.
- h. The run will commence when both the candidate and the QPT are content that all necessary preparations have been carried out.
- i. The RN candidate is to slow down the running machine in a safe and controlled manner.
- j. The candidate is to be given a comprehensive warm down and stretch by the QPT. They are also to be advised to replenish fluids and replace layers of clothing as necessary.
- k. Results are to be recorded and added to the report submitted to the AFCO. RN/MR remains pass or fail, RM are as follows: -
 - 1. Fail
 - 2. Pass
 - 3. Strong Pass
 - 4. Did not attend
 - 5. It should be noted if an RM Officer candidate has passed for an RM Other Rank (OR) but failed for Officer.
- l. QPTs are to offer personal physical development advice to candidates that have not met the required physical criteria. QPTs are also requested to signpost candidates to physical and mental resilience advice and films on the RN website and RN/RM social media and YouTube. Links will be provided by R&A/ DoCC.

ROYAL MARINES UPPER BODY EXERCISES AND ROYAL MARINES CARDIOVASCULAR PREDICTION TEST (RMCPT) INTRODUCTION

Introduction

- 14. The aim of the RM upper body exercise introduction is to give RM candidates the chance to be shown and practice the correct form of Burpees, Press-Ups, Pull-ups, Sit-ups, and Plank prior to their attendance of the Recruit Orientation Phase (ROP) at the Commando training Centre, Lympstone. This introduction is a test to determine their current level of fitness. Any information that can be fed back to the RM Candidates AFCO / Careers Adviser will be used to help determine whether a candidate is ready to attend the ROP.

Correct Form

- 15. All exercises – namely Pull-Ups, Burpees, Sit-Ups, Press-Ups, and Plank – are to be demonstrated and conducted using the correct form. The QPT's are to ensure they understand how each exercise is to be completed; the exercises are demonstrated at the following links:
- 16. It should also be noted that all exercises are to be conducted to an audial bleep, each repetition of the exercise should be commenced every time a bleep is heard. The following links are to be used to by the QPT to demonstrate the test and for the candidates to practice the exercises, before testing:

- a. PJFT+ Circuit Audio - <https://youtu.be/S1Vi-RkW2EY>.
- b. PJFT+ (Officer) Circuit - <https://youtu.be/5HzepAxLZFs>

Exercise Details

- 17. Candidates must have access to a PT Mat (no more than 2" thick), and area to conduct burpees, sit-ups with feet fixed, press-ups, plank exercise and an appropriate height adjusted bar for the pull-ups.
 - a. A mat should be provided for the sit-ups, the exercise is always conducted with the feet fixed, just off the edge of the mat and lower back in contact with the mat at all times
 - b. An area and device ready to play the audio track ensuring no interruption during the test.
 - c. A T-shirt or training top that fits close to the body must be worn. This will aid the accurate counting of all exercises.

Support and advice for the assessment.

- 18. Please follow this link:

https://www.youtube.com/playlist?list=PLIN4KXxIMbCUhXjkvdolQi9YPJP_bOCN1 to access following content

- (1) PJFT+ Warm Up.
- (2) Burpees – Exercise explanation and demonstration
- (3) Sit-ups – Exercise explanation and demonstration
- (4) Press-ups – Exercise explanation and demonstration
- (5) Plank – Exercise explanation and demonstration
- (6) PJFT+ Circuit Audio (OR 3 sets and Officer 4)
- (7) Pull-ups – Exercise explanation and demonstration
- (8) Pull-Ups – Audio track

- 19. The PJFT+ will be marked as follows:

- a. **Fail** – If a candidate is unable to complete every single rep on all of the 3 sets (4 for Officer candidates). If all reps are achieved but candidate failed to conduct continued correct form in one or more of the exercises. i.e., just one rep on any of the exercises is missed or poorly executed or continued poor form on one or any of the exercises will result in a fail.
- b. **Pass** – Completed all sets and reps with at least average to good form throughout – Breathing may be elevated; however, the candidate is able to keep respiratory rate under control. Form may start to show signs of fatigue on the last few reps on one or more of the exercises on 2nd and 3rd sets, (3rd and 4th for Officer candidates) however, form still to the standard required.
- c. **Strong Pass** – Completed all sets and reps with excellent form throughout, showing little or no signs of fatigue and breathing just slightly elevated throughout.

d. **Did not attend** – The candidate failed to attend the test.

20. Form needs to be observed closely throughout, it makes a significant difference to a pass or fail and shows the PT Instructor the candidate has the strength and conditioning in the areas we are testing, particular attention in the core and lower back on the press-ups and plank, and hip flexors on the sit-ups.
21. There are many ways in which the candidates try to make the reps easier by adapting the form and therefore not conforming to what the RM require, resulting in a fail.

Exercises tested during the PJFT+ are linked to RM Training Test Conditions.

22. PT Staff must be aware that lack of strength and/or conditioning in any of these areas has a direct impact on a Candidates ability to be successful during RM Training. In addition, Candidates who meet the required standard will have a significantly reduced chance of being injured during training as a result.
23. An example of what a Recruit will be tested on during training before the Commando Phase begins; A Recruit must pass the following on the Bottom Field phase; A Recruit is expected to achieve a 30ft Rope Climb, an Assault Course pass, a 200M Fireman's Carry in 90 seconds and a Full Regain all conducted with **21lbs of weight in the webbing carried around the waist and an SA80 Rifle fixed to the Recruits back, all of which weighs nearly 40lbs.**

Exercise Form Guide

24. Please ensure the following is always closely followed during the conduct of the PJFT+.

PJFT+
The PJFT+ is a continuous circuit that is made up of four exercises, 3 sets for Other Rank Candidates and 4 sets for Officer Candidates. Followed by 5 reps of Pull-ups after a 2 min rest.
Exercise 1 - Burpees - Repetitions x 20
1. From the standing start position with feet together and hands by the side, and head up eyes looking forward, the Candidate will squat down so the hands are either side of the feet with knees bent and together with the glutes as close to the ankles as possible.
2. Both feet jump back together at speed into a press-up start position, head looking slightly forward with back and hips straight.
3. The feet then return at speed to the squat position, knees bent and together.
4. Standing up to finish.
Point to note: One complete repetition is as follows and is to be done as per the audio timing.
1-2-3-4 = 1
1-2-3-4 = 2
1-2-3-4 = 3 etc...finishing on 1-2-3-4 = 20 and then moving onto Sit-Ups.
Key Form points to note as the candidate fatigues:

1. Ensure candidates perform the 4 distinct movements throughout, they tend to merge the movements of 1 & 2 or 3 & 4 into an almost single movement when and as they fatigue.
2. Ensure full extension to the rear of the feet on movement 2, throughout the 20 reps, again when fatigued the legs either don't extend fully, there is a gradual bending at the knees, hips, and lower back, or are not engaged into a flat position (the backside is pushed upward or an arch in the back develops).
3. Breathing can become uncontrolled and standing up straight as well as the leg extension can become uncoordinated as the candidate struggles to engage the core.

Exercise 2 - Sit-Ups - Repetitions x 30

The exercises will be conducted to the *bleep* and are performed once the Burpees have been completed. The feet are fixed in place, by a fixed support or a partner holding the ankles in place.

1. Start position - Knees bent and held together, head and shoulders resting on the floor with fingers touching the temples with elbows bent.
2. *Bleep* – Moving a fraction of a second after hearing the bleep, at speed, the elbows close together at the top of the movement and touch the top of the knees on the upward motion, with the fingers in contact with the temples at all times and knees squeezed together throughout.
3. Ensuring there is no rest at the top, you then sit back again at speed to the start position with elbows flat and fingers in contact with the temples.

Point to note: This is one repetition. At all times the knees are required to be squeezed together. **There is a slight pause once in the start position waiting for the next bleep.**

Key Form points to note as the candidate fatigues:

1. Candidates will shorten or/and be unable to maintain the pause after/before each repetition.
2. Candidates are unable to maintain the squeeze of their knees or the elbows coming together at the top of the movement.
2. Candidates will try to gain momentum from elsewhere, instead of the full engagement of the hip flexors to perform the exercise one or a combination of the following will be observed:
 - a. Fingers coming away from the temples on the initial movement.
 - b. Lower back raising off the floor slightly before the movement commences aiding the initial inertia.
 - c. A lack of a pause resulting in one consistent movement.

A few reps of the above at the end of the 2nd or 3rd sets can still result in a pass, but consistent failure to maintain the pause will result in a fail on this element and a failed attempt of the test.

Press – Ups - Repetitions x 20

The exercises will again be conducted to the *bleep* as per the RM technique and be performed immediately once the Sit-Ups have been completed.

1. Start position - Body straight, by engaging the hips, lower back, glutes into a neutral flat position, feet together, hands shoulder-width apart with the head looking to the ground approximately one metre away
2. *Bleep* – At speed the body drops so the elbows are bent to a **ninety-degree angle** in the lower position before raising up to fully locked out the arms and elbows, keeping the elbows as close as

possible to the lats at all times. There will be a slight pause before the next bleep. Chest should be approx. 4 inches from the ground.

Points to Note: You must not rest your knees. Wearing a T-shirt or training top that fits close to the body will aid the accurate counting of press ups.

A rolled small towel that is approximately 4 inches in diameter which is placed in such a way that when you lower your chest, it touches just above the sternum. The towel should run down the midline of your body on the floor – chest to stomach.

Key Form points to note as the candidate fatigues: A close eye on the hip and body position is crucial, failure to maintain for more than 95% of the reps must end in a failed attempt!

1. The candidates may start to arch the lower back and/or push the hips through, showing a clear weakness in this area. This results in either a pivot motion in the hips during the press-up or the hips following up a fraction of a second after the arms have extended at the end of the movement.
2. The glutes are raised in the air from the neutral starting position. Again, showing a weakness in this area, again press-ups are conducted with a pivot motion in the hips, or the hips held high throughout the movement resulting in an easier to conduct exercise.
3. Candidates are unable to conduct a complete 90-degree flex of the elbow on each rep; it often starts to present with a turn of the head to one side on the lowering of the body as one of the triceps starts to fatigue.
4. Elbows must remain close to the sides of the body as possible; it is more of a triceps press-up; elbows can start to widen during fatigue as the candidate wants to engage the chest more. Again, resulting in a fail.

Exercise 4 - Plank - Time = 1 Minute

The exercises will last one minute and be performed immediately once the Press-Ups have been completed.

1. Start position – Similar to the Press-Up, the Body and hips are neutral, feet together with elbows shoulder-width apart taking the weight of the body. Head again looking to the ground approximately one metre away.

Point to note – There is to be no movement for the one-minute exercise duration. This should be performed on an exercise mat. Be aware of the hip position before first set commences.

Key Form points to note as the candidate fatigues:

1. Candidates will start to move in the hip and/or shoulder area, this may be subtle to start with, slight rocking or circular motion gradually increasing or the constant need to adjust as if they are “slipping”.
2. Glutes may start to raise, or an arch in the lower back develops (similar to the press-ups). Candidates must be able to maintain the neutral flat start position from the shoulders to the feet at least 95%+ of the duration of the exercise.
3. One or two adjustments may be allowed if they do slip due to sweat or trainers slip on the surface for example, however this must not be mistaken for continued adjustment for weakness in area which must result in a failure on this element.
4. Be vigilant on Candidates not moving the knees away quick enough to the audio, or resting the knees a fraction early

Pull – Ups – Conducted after the PJFT+ - Rest of 2 minutes - Repetitions 5.

Candidates will be given 2 minutes to recover from the PJFT+ exercises, encouraged not to stand still, they can stretch, rehydrate, and dry their hands prior to attempting the pull-ups.

The exercise is conducted in time with the bleep on the audio, Candidates must conduct 5 confident reps in order to achieve a pass.

1. Jumping onto the bar or being aided by a boxed platform if required, an overhand grip just slightly wider than shoulder with apart, full extension of the arms a “dead hang” is the initial start point. Legs uncrossed, straight, with the knees and feet squeezed together. Ideally the bar is set high enough the feet clear the ground, if this is unachievable due to equipment available, Candidates may be allowed a bend in the knees to clear the floor.

2. On the first bleep candidates must confidently pull themselves from the dead hang position without any kipping or any swing in the legs or feet. The chin must clear the bar, it must not rest or be in line with the bar.

3. A pause/hold must be maintained in this position before the second bleep to extent is heard.

4. Extension of the arms must be swift but controlled, the Candidate must ensure they return to the dead hang position, with no flex in the arm or engagement of the lats. This is very important; the candidate must be able to have the ability to break the position at the longest part of the lever on each and every rep.

Key Form points to note as the candidate fatigues:

1. Candidates will try to kip or perform more than one single movement as they flex the arms on the initial movement.

2. Candidates are unable to perform the isometric hold at the top of the movement before they hear the bleep to return to the start position.

3. The chin is unable to clear the bar.

4. The candidate may try to disguise the fact that they are not in the full extension “dead hang” position before the first or next rep is about to commence, usually by having the slightest of bend/flex in the elbow or engaging of the lats before the movement is to be conducted.

Warnings given to a Candidate before a fail is given.

25. PT staff can talk to the Candidates during the test (without giving any encouragement) to correct form if they see it deviate from the required standard. Using a 3-strike rule, if a Candidate is unable to adjust back to the correct form the test can be stopped immediately and a fail given.
26. Where a candidate performs all the repetitions and sets but clearly one or more of the exercises are not up to the required standard, as explained above, the PT Instructor must issue a fail.

Summary

27. The above may seem overkill, and a relentless focus placed on form and technique of the exercises, as, “we are only conducting a small circuit with some pull-ups to finish”.

28. However, The PJFT+ has been specifically designed to replicate and show conditioning in specific muscle groups which are directly related to testing in the 32 Weeks of initial RM Training.
29. Candidates must be strong enough in these areas to have the best chance of passing RM Training, in addition countless medical studies conducted at the Commando Training Centre have shown; if a Candidate is properly prepared the risk of injury is greatly reduced.
30. **Please do not underestimate the importance of the form and the Candidates ability to achieve the required standard.** With a few weeks effort and discipline working on the correct technique and conditioning on the areas required, a Candidate with the right focus and determination to join the RM should have the ability to pass this test with relative ease
31. **Qualified Personal Trainer Role.** The QPT is to ensure that the candidate is briefed correctly on each exercise and can practice them. They should also ensure that each candidate completes the exercises to the correct form throughout the activity giving them advice throughout. They should also assist them where required (holding the candidates' feet whilst they conduct the sit-ups if there are no other candidates for example). The QPT is to ensure that the candidates are reminded that they are not to hold their breath whilst performing any of the exercises and to inhale/exhale with each repetition.

TEST PROTOCOL

32. Ensure that all candidates are fully mobilised prior to commencing the test. Their performance must be monitored during the test and on completion ensure that the time taken for the duration is recorded. The following protocols are to be undertaken in order to conduct the RMCPT:
 - a. Enter age, gender, and weight on results form.
 - b. Read general and RMCPT briefs (see Schedule 10.2, Annex A)
 - c. Demonstrate and practice techniques.
 - d. Begin testing.
 - e. Monitor performance and check Candidate's progression.
 - f. Conduct appropriate cool down at cessation of test.
 - g. Calculate scores.

DRESS

33. Candidates are to wear appropriate PT clothing and footwear. Females should wear sports bras, as underwear containing wire can interfere with the heart rate signal.

CONDUCTING STAFF

34. The RM QPT should be fully qualified PT instructors a minimum of Gym Level 2.

SAFETY

35. The safety of the participant is of the highest priority. The lead PT instructor is to ensure the following safety procedures are always adhered to:
- a. **Candidates Fitness.** If there is any doubt about an individual's fitness to undertake the RMCPT or their ability to continue safely, the individual should not undergo testing/should be withdrawn from testing. A medical assessment is to be sought where considered appropriate.
 - b. **Briefs.** All Candidates are to be given a thorough health and safety brief and read the RMCPT Brief (see Schedule 10.2, Annex A).
 - c. **Warm Up (mobilisation only required) and Cool Down** each Candidate.
 - d. **The test must be monitored to ensure it remains sub-maximal throughout**

HYDRATION

36. When conducting the test, the consumption of suitable fluids prior and post must be encouraged.

PROCEDURE TO COMPLETE THE PJFT+ RESULTS FORM

37. The result form, which the candidate will have brought with them, is to be completed as follows:
- a. Prior to conducting the test, the candidate should complete and sign Section 1.
 - b. On completion of the assessment, the QPT is to complete all fields in Section 2.
 - c. Once Sections 1 and 2 have been completed as required, the candidate is to sign the acknowledgement section at Section 3.
 - d. Two copies of the form are to be made. One copy is to be handed to the candidate. The second copy is to be retained by the CFC for their records and as part of the audit trail.
 - e. The original is to be emailed by the QPT to the candidate's AFCCO within 24 hours of the test. Additionally, any comments on the candidate's exposure / conducting of the Royal Marines Upper Body Exercises Introduction should be passed to the AFCCO as this information can be used to help brief the candidate prior to attendance of ROP.

ANNEX A TO SCHEDULE 10.2

ROYAL NAVY CANDIDATES PRE-JOINING FITNESS TESTS and BRIEF

1. **PJFT:** It is vital that the correct initial brief is given to all candidates to ensure they fully understand what is required of them and how they are going to conduct the test therefore the following brief must be read out verbatim to all applicants prior to commencement of the PJFT by the QPT:
 - a. This is the brief for all applicants who wish to carry out the PJFT at the end of this brief I will ask you to complete and sign the results certificate.
 - b. You are required to be wearing appropriate running clothing and training shoes.
 - c. The test will be:
- 1) **RN Candidates.** A 2.4km timed run, which will be conducted on a running machine set to the pace required to achieve your PJFT pass appropriate to your age and gender.
 - a. You will conduct a warmup, stretch and familiarisation with the treadmill. On completion of the warmup and only when we are both happy that all preparations have been conducted, will the test begin.
 - b. If you have any ailments, conditions (including pregnancy) or injuries which you think may restrict you from successfully completing the test you should bring them to my attention before commencing the test.
 - c. If at any time whilst carrying out the PJFT you feel unwell, you are to **stop immediately** and alert me. You should also stop if you experience any sickness, pain in the chest or light-headedness.
 - d. If you are given an instruction to terminate the test, you **must** obey it immediately.
 - e. I will now fully brief you on the instrument panel of the machine. All control settings, including the 'Emergency Stop' button, will be fully described to you prior to commencing the test. If at any time during the brief you are unsure about how to use the controls on the running machine you are advised to bring it to my attention. (QPT to give brief on actual machine to be used).
 - f. I am not authorised to give any verbal encouragement during the test.
 - g. The maximum times you will be allowed in order to achieve a "Pass" grade are shown on the letter that you received from your careers office and which you showed to me on your arrival.
 - h. You are encouraged to drink water prior to the test.

- i. I will conduct a comprehensive warm down and stretch after the test. I will also advise you to put on extra clothing to keep warm and to drink water to replenish the fluids lost through testing.
- j. Do you have any questions?

2. **PJFT+:** It is vital that the correct initial brief is given to all candidates to ensure they fully understand what is required of them and how they are going to conduct the test therefore the following brief must be read out verbatim to all applicants prior to commencement of the PJFT+, by the QPT:

- a. This is the brief for all applicants who wish to carry out the PJFT+, at the end of this brief I will ask you to complete and sign the results certificate.
- b. You are required to be wearing appropriate running clothing and training shoes.
- c. The test will be:

2) RM Candidates and RN Divers.

- a. The test consists of 3 sets of 4 exercises (4 sets of 4 for Officer Candidates) completed in sequence and in time with the relevant audio track. If successfully completed, you will then be required to conduct 5 over-hand grasp, dead hang pull-ups after a 2 min rest.
- b. I will conduct a safety brief then a warm-up and dynamic stretch. On completion I will ask you to conduct 2 reps of each exercise (5 secs on the Plank) in order to ensure you are conducting each exercise with the correct form. Only when we are both happy that all preparations have been conducted, the test will begin. I will conduct a warm down and stretch after the test.
- c. I am not authorised to give any verbal encouragement during the test; however, I can and will give you warnings on your form, if any of the exercises starts to deviate from the required standard. I will operate a 3-strike rule, if after the 3rd pick-up you fail to correct poor form, I will stop the test. If I do have to correct your form do not stop, remember a missed rep is a fail.

Safety Brief.

- a. Have you hydrated and eaten today?
- b. You may drink water before, during (transitions of the exercises) and after the test.
- c. Do you have any injuries, even a slight niggle that may affect the test or any of the exercises being conducted?
- d. Do you feel well, no fever, illness etc?
- e. Do you have any medical conditions that you need to inform me of?

- f. If you feel unwell, any pain, dizziness, tightness in the chest at any point in the test, stop immediately and alert me ASAP.
- g. If you are given an instruction to stop the test, you must obey it immediately.

PT Instructor to now give a brief on the area and equipment that is being used and then conduct the Warm-up.

Demo of the exercises – PT Instructor to view, critique and adjust if/where necessary. (Take enough time to ensure candidate is conducting best practise of the form required)

1. Conduct 2 burpees in your own time
2. Conduct 2 sit-ups in your own time
3. Conduct 2 press-ups in your own time
4. Conduct 5 secs of the Plank
5. Conduct 1 pull-up (ensure shoulders and upper body are warm and mobilised)

When the PT Instructor is ready to conduct the test however a secondary quick warm-up may be conducted if the instructor had to take extra time to conduct any further explanations due to poor form on the demos and the Candidate has cooled down as a result.

If the test has been successful, move onto the pull-ups test after a 2-minute rest (timed by the PT Instructor).

Debrief and results given. If any weaknesses are highlighted, please discuss with the Candidate.

Central and East of England	Northern England
Nottingham Derby Leicester Lincoln Peterborough	Newcastle Middlesbrough Carlisle
Luton Cambridge Ipswich Chelmsford Norwich	Hull Leeds Sheffield
	Preston Liverpool Manchester
Greater London & South East	Scotland & Northern Ireland
Chatham London Canterbury	Belfast
Portsmouth Southampton Brighton	Dundee Aberdeen Edinburgh Glasgow Inverness
Reading Oxford	

Guildford	
South West	Wales & Western England
Plymouth Redruth Exeter	Cardiff Swansea Shrewsbury Gloucester
Bristol Taunton Bournemouth	Coventry Birmingham Wolverhampton Stoke Wrexham

SCHEDULE 10.3 – RAF / RAF Reserves SOR

STATEMENT OF REQUIREMENT (SOR)

Introduction

The Royal Air Force requires a Civilian Fitness Centres (CFCs) to conduct a standard Pre-Joining Fitness Test (PJFT) for applicants wishing to join the Royal Air Force and Royal Air Force Reserves.

Armed Forces Careers Offices (AFCO) shall refer the applicants to the CFC(s). It is essential that UK Nationwide coverage is provided to meet the whole of the requirement

Armed Forces Careers Offices (AFCOs)³ shall refer the applicants to the CFCs. It is essential that UK Nationwide coverage is provided to meet the whole of the requirement. No applicant shall have to travel more than 1 hour, by public transport, from their nearest train or Bus station in order to be tested.

Last year, the RAF required 7,500 tests for both their Regular and Reserve Force.

The CFC shall be responsible for ensuring that the test is conducted in accordance with relevant Health and Safety at Work Act 1974 legislation ensuring that all applicants are supervised at all times by a qualified fitness instructor of Gym Level 2. The Fitness Centre must be responsible for provision of first aid and be in possession of valid public liability insurance cover.

Applicants referred to the CFC(s) will have attended an RAF/RAF Reserves pre-entry medical examination prior to their referral for the PJFT. Candidates will range in age from fifteen years nine months to fifty-five years; however older candidates may occasionally require testing.

The RAF/RAF Reserves tests will be specific to the applicant and test standards will be contained in the letter which the applicant will take to the CFC.

The CFC must provide the following capabilities;

- a. Receive telephone calls from individual applicants or Designated Officers (DO) and book a specific mutually agreed time for test, but with an appointment within 7 days of the request, which may include evenings and/or weekends.
- b. Provide the applicant with directions to the centre (verbally and by letter or e-mail if required) and advise on appropriate dress for test.
- c. Conduct the fitness test (in accordance with the precise specification laid down by the RAF).
- d. Undertake the following procedure, which must be supervised by a Qualified Personal Trainer (QPT);

³ AFCO is a generic term that references any Naval Recruitment Careers Office

1. Provide changing facilities and secure stowage for personal possessions.
2. Measure and record height and weight in metric units (kg and cm)
3. Provide a brief on the equipment to be used.
4. Explain the test procedure, including target time (relative to age)
5. Supervise warm-up
6. Conduct test providing advice on the pace required and progress during the test and the relevant techniques required.
7. Supervise cool-down
8. Provide showering facilities and drinking water as required
9. Report individual results to appropriate AFCO via e- mail/post and provide the candidate with a copy of results
10. Provide a monthly list of all those applicants tested, together with their results, to the appropriate AFCO
11. If candidates from more than one AFCO attend the same Gym, then the Gym will have to submit separate lists. Provide candidates with a minimum of 3 practice sessions at nil cost.
12. Explain to successful candidates the differences between the RAF Multi Stage Fitness Test (the next stage) and the PJFT, demonstrating appropriate techniques. Hand out literature to all successful candidates.

During the performance of the Contract, CFC(s) providing the PJFT may be visited on a random basis by RAF Staff or their representatives to ensure that the facilities and the procedures set out are being maintained.

STATEMENT OF REQUIREMENT (SOR) SECTION 2 – BRIEF TO THE QUALIFIED PERSONAL TRAINER (QPT)

Those conducting the assessments must adhere to the following;

- a. You must be a qualified Personal Trainer.
- b. You shall administer the Royal Air Force (RAF) Pre-Joining Fitness Test (PJFT) which consists of a 2.4km timed run on a treadmill followed by a press-up and sit-up test.
- c. You shall, after confirming the identity of the candidate, brief the applicant, conduct the test and record the results. Specifically:
 1. All candidate details are to be checked and photographic ID verified prior to the test.

2. Prior to conducting the test consent must be granted and the candidate is to complete and sign a proforma prior to commencing Fitness Test.
3. MOD Fitness Test Record should then be e-mailed to the relevant Armed Forces Careers Office (AFCO) or Medical/Fitness Booking Cell (MFBC) after the test is completed.

EQUIPMENT

A running treadmill is required to conduct the 2.4km run. It must be calibrated on a regular basis in accordance with manufacturer's instructions. A gymnasium mat will be required for the press-up and sit-up tests. A first aid kit and qualified first aider must be available in case of an emergency or accident.

PRE-TEST CANDIDATE'S BRIEF

The following brief must be read out **verbatim** to all candidates prior to the commencement of testing by the QPT:

- a. *This is a brief for all candidates who wish to undertake the RAF Pre-Joining Fitness Test. You will receive further briefs before the start of each testing element (i.e., the treadmill test, press-up test and sit-up test). At the end of the brief, I will ask you to sign the MOD Fitness Test Record consent form.*
- b. *You are to wear appropriate sports clothing and training shoes.*
- c. *The Pre-Joining Fitness Test will be in the form of a 2.4km timed treadmill run, a press-up test and a sit-up test. If you fail an element, you may undertake the remaining elements if you wish to do so.*
- d. *Before testing begins, I will give you a comprehensive warm-up, which will include stretching.*
- e. *I will also lead you on a warm down and stretch after you have completed all three elements of the test. After the PJFT is complete, you are advised to put on extra clothing to keep warm and to drink water to replenish the fluids lost through testing.*
- f. *If you have any ailments, conditions (including pregnancy) or injuries which you think may restrict you from successfully completing the test you should bring them to my attention before commencing the test.*
- g. *If at any time whilst undertaking the PJFT you feel unwell, you are to stop immediately and alert me. You should also stop if you experience any sickness, pain in the chest or light-headedness.*
- h. *If you are given an instruction to stop the test, you must obey it immediately.*
- i. *I am not allowed to give you any verbal encouragement during any part of the PJFT. However, I will make you aware of exactly what pace you need to maintain in order to complete the 2.4km run successfully and I will count aloud during the*

press-up and sit-up tests, in order to let you know how many repetitions you have performed.

- j. *I will remind you of the pass standard for your age and gender before you start each element of the PJFT. The pass standards are also shown on the letter you received from your career's office.*
- k. *Before you commence the 2.4km run on the treadmill, I will give you a comprehensive brief on how to use the treadmill that you will be using. Specifically, I will brief you on the instrument panel, the control settings and the use of the emergency stop button. If you do not understand anything you should bring it to my attention.*
- l. *Do you have any questions?*

2.4KM RUN TEST - PROTOCOLS

INTRODUCTION

The aim of the 2.4km treadmill run is to measure an individual's aerobic fitness. Individuals are required to run 2.4km as fast as they can.

EQUIPMENT

The following equipment is required:

- a. Calibrated treadmill.
- b. 2.4km run brief.
- c. Stopwatch.

TESTING REQUIREMENTS

- a. The QPT must be familiar with the treadmill controls.
- b. The QPT may only supervise one candidate at a time and must always remain in attendance throughout the test.
- c. The treadmill is to be set at a zero incline throughout the test.
- d. The candidate is to be given a comprehensive brief on how to use the treadmill. The brief must include a demonstration of starting, stopping, speed increase and speed decrease. There is to be a practical demonstration, and should the candidate not be used to running on a treadmill, the candidate should be offered the chance to briefly practice.
- e. The candidate is to control all settings on the treadmill, speeding up and slowing down as required. The candidate is to be made fully aware of how the distance and pace are measured on the machine's display. The QPT is authorised to assist the candidate with pace advice during the test.

- f. The QPT is to give the candidate a thorough warm up before the run begins.
- g. The 2.4km run will begin when both the candidate and QPT are content that all necessary preparations have been completed.
- h. When 2.4km has been reached the candidate is to slow the treadmill down in a safe and controlled manner.
- i. The time when 2.4km has been reached is to be recorded (to the nearest whole second) by the QPT and annotated on the MOD Fitness Test Record.

2.4KM RUN TEST CANDIDATE BRIEF – (TO BE READ VERBATIM WITH DEMONSTRATION)

The aim of the 2.4km treadmill run is to measure your aerobic fitness.

Format

- a. *You are to run 2.4km as quickly as possible on the treadmill. You are required to do so undermins to pass. (Determined by age and gender of candidate).*
- b. *When I say 'Go' you will start the treadmill and adjust the speed to a level that you are comfortable with, remembering that you are required to complete the run in under.....mins. I will offer advice on the pace you require to pass.*
- c. *When you reach 2.4km I will record the time you have taken, and you are to gradually slow the treadmill down in a controlled manner, warming down as you do so.*
- d. *I will confirm your time at the end of the test.*

Use of the treadmill (The instructor is to explain and demonstrate)

- a. *I will now explain and demonstrate the use of the treadmill. I will show you how to start, stop, increase speed and decrease speed. If you are unused to running on a treadmill let me know and I will give you the opportunity for a brief practice.*

Commands

- a. *I will begin the test by giving the command 'Standby 3-2-1 Go'.*
- b. *I will advise you when you are halfway through the test.*
- c. *When you have reached 2.4km I will tell you to 'Stop'.*

Health and Safety

- a. *Breathe naturally when you run.*
- b. *If you feel out of control either slow the treadmill down or press the emergency stop button.*

Questions

- a. *Do you know the time you have to complete the run in to successfully pass the test?*
- b. *Do you have any questions?*
- c. *Are you ready to begin?*

PRESS-UP TEST - PROTOCOLS

INTRODUCTION

The aim of the press-up test is to measure the strength and endurance of the upper body. Press-ups are performed for a maximum duration of one minute, or until the individual stops (knees touch the floor) or continually fails to perform the press-up using the correct form.

CORRECT FORM

The press-ups are to be completed using the correct form, namely:

- a. **Set Up Position.** The candidate lies flat on their stomach with their legs straight and feet not more than 30cm apart. Hands (or fists) are positioned in a comfortable position, slightly wider than shoulder width apart and in line with the shoulders. Press-ups are to be conducted on a flat surface.
- b. **Start/Finish Position.** Keeping the head in a neutral position, the candidate is to raise the body up by straightening their arms, ensuring the back is kept straight with the feet acting as a pivot. The elbows are to be locked at the highest point; this is the start/finish position. See Figure 1 & 2.

Figure 1.



Figure 2.



- c. **Action.** The body is lowered by bending the elbows until the upper arms are parallel (90°) to the floor, making contact with the instructor's fist (this is the down position). The body is to be kept straight throughout the exercise. See Figure 3 & 4.

Figure 3.



Figure 4.



- d. **QPT.** QPTs are to lie in front⁴ of the candidate and place their elbow on the floor or mat so that their fist is touching the lower part of the candidate's shoulder when the candidate is in the down position. This is when the candidate's upper arm is parallel to the floor. The instructor's fist should then stay in this position throughout the duration of the test.
- e. **Resting.** Candidates may rest (if required) but only in the start/finish position.

EQUIPMENT

The following equipment is required:

- a. Gymnasium mat.
- b. Press-up test brief.
- c. Stopwatch.

TESTING

The protocols for the test are as follows:

- a. Ensure that a minimum of 5 mins has elapsed after the 2.4km run.
- b. Read out the press-up brief verbatim.
- c. Start the stopwatch and test the candidate (time limit of one-minute).
- d. Monitor the candidate and offer corrective advice.
- e. Ensure the QPT's fist is maintained at a level where the candidate's upper arm is parallel (90°) to the floor, in the down position.
- f. Withdraw any candidate if they fail to maintain the correct form or repeatedly fail to touch the QPT's fist.
- g. Record results.

PRESS-UP TEST CANDIDATE BRIEF – (TO BE READ VERBATIM WITH DEMONSTRATION)

The aim of the press-up test is to measure the degree of muscular strength and endurance of your upper body.

⁴ In figures 2 & 4 the instructor's position is to the side, in order to allow the press-up to be viewed from the front.

Format

- a. *You are to complete as many press-ups as possible within one minute on a flat surface. You are required to achieve a minimum of...to pass.*
- b. *You will work on your own and I will count.*
- c. *Should you wish to rest between press-ups, you must do so with your arms fully extended and your back and legs straight. If your knee(s) touch the floor at any point during the test you will be instructed to stop.*
- d. *You will receive corrective advice if you are failing to maintain the correct form. If you fail to correct your form, you will be told to stop.*
- e. *I will confirm how many repetitions you achieved at the end of the test.*

Correct Form (The instructor is to detail and demonstrate the correct form)

- a. *I will now explain and demonstrate the correct form.*
- b. *Set Up Position. You are to lie down on your stomach with your legs straight and feet no more than 30cm apart. Position your hands (or fists) in a comfortable position, slightly wider than shoulder width apart and in line with the shoulders. Ensure that both your hands and feet are on a level surface (mat or floor).*
- c. *Start/Finish Position. You are to keep your head in a neutral position and raise your body up by straightening your arms, ensuring that your back and legs are kept straight. Your elbows are to be locked at the highest point.*
- d. *Action. You are to lower your body, keeping your back and legs straight, so that your upper arms become parallel (90°) to the floor. When your upper arms are parallel to the floor, this is the down position.*

Commands

- a. *I will start with the command 'Test and adjust the correct down position'. (The candidate is to adopt the correct down position with the QPT touching the candidate's shoulder with a clenched fist).*
- b. *I will begin the test by giving the command 'Standby 3-2-1 Go'.*
- c. *I will advise you when you are halfway through the test.*
- d. *After one minute you will be given the command 'Stop'.*

Health and Safety

- a. *Do not hold your breath whilst performing the press-ups, inhale, and exhale with each repetition*

Questions

- a. Do you know how many press-ups you require to pass?*
- b. Do you have any questions?*
- c. Are you ready to begin?*

SIT-UP TEST - PROTOCOLS

INTRODUCTION

The aim of the sit-up test is to measure the strength and endurance of the abdominal muscles. Sit-ups are to be performed for a maximum duration of one minute, or until the candidate stops or continually fails to perform the sit-up using the correct form.

CORRECT FORM

The sit-ups are to be completed using the correct form, namely:

- a. Set Up/Start Position.** The candidate lies on a mat with the knees bent to approximately 90° and feet approximately 30 cm apart. Feet, back and shoulder blades should be flat on the mat. Hands are placed on the temples of the head (not behind) and must be maintained in this position throughout the test. See Figure 1.
- b. Finish Position.** Both elbows touching the tops of the knees. See Figure 2.
- c. Action.** The sit-up is initiated by curling the trunk up, so that both elbows touch the top of the knees. The trunk is then lowered in a controlled manner, so that the back and shoulder blades touch the mat, back in the start position. Candidates are not to 'bounce' off the mat at any time during the test.
- d. QPT.** QPTs are to ensure that the candidate's feet are secured for the duration of the test to stop rocking, stabilise the lower body and to ensure that the feet remain in contact with the mat.
- e. Resting.** Candidates may rest (if required) but only in the start position.

Figure 1.

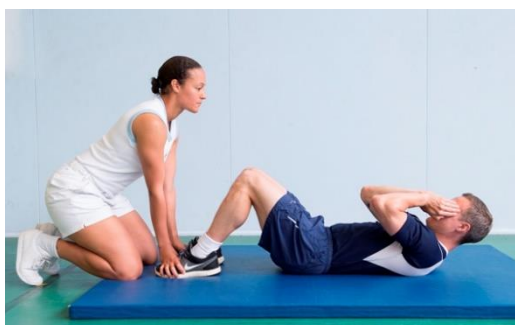


Figure 2.



EQUIPMENT

The following equipment is required for the sit-up test:

- a. Gymnasium mat.
- b. Sit-up test brief.
- c. Stopwatch.

TESTING

The protocols for the test are as follows:

- a. Read out the sit-up brief verbatim.
- b. Start the stopwatch and test the candidate (time limit of one-min).
- c. Monitor the candidate and offer corrective advice.
- d. Ensure that the candidate touches their knees with their elbows, keeps their hands on their temple and touches the mat with their shoulder blades.
- e. Withdraw any candidate if they fail to maintain the correct form.
- f. Record results.

SIT-UP TEST CANDIDATE BRIEF - (TO BE READ VERBATIM WITH DEMONSTRATION)

The aim of the sit-up test is to measure the level of muscular strength and endurance of your abdominal muscles.

Format

- a. *You are to complete as many sit-ups as possible within one minute.*

- b. You will work on your own and I will count whilst holding your feet in a stable position.*
- c. Should you wish to rest during the test, you must do so with your shoulder blades and back flat on the mat and your hands on your temples.*
- d. You will receive corrective advice if you are failing to maintain the correct form. If you fail to correct your form, you will be told to stop.*
- e. I will confirm how many repetitions you achieved at the end of the test.*

Correct Form (*The instructor is to detail and demonstrate the correct form*)

- a. I will now explain and demonstrate the correct form.*
- b. Set Up/Start Position. You are to lie on the mat with your knees bent to approximately 90o and your feet approximately 30 cm apart. Your feet, back and shoulder blades should be placed flat on the mat. Your hands are to be placed on your temples but not behind your head. It is not necessary for your head to touch the mat.*
- c. Action. You are to curl your trunk up, so that both your elbows touch the top of your knees. In a controlled manner, you are to then to lower your trunk to the start position, so that your back and shoulder blades touch the mat. You are not to 'bounce' off the mat.*

Commands

- a. I will begin the test by giving the command 'Standby 3-2-1 Go'.*
- b. I will advise you when you are halfway through the test.*
- c. After one minute you will be given the command 'Stop'.*

Health and Safety

- a. Do not hold your breath whilst performing the sit-ups, inhale, and exhale with each repetition.*

Questions

- a. Do you know how many press-ups you require to pass?*
- b. Do you have any questions?*
- c. Are you ready to begin?*

COMPLETION OF PJFT RESULTS FORM

The result form, which the candidate will have brought with them, is to be completed as follows

- a. Confirm personal details are correct and that Section 1 has been signed by the candidate.
- b. On completion of the test, the QPT is to record the results in Section 2 with an overall PASS/FAIL indicated. The QPT is to sign and date the form.
- c. Once Sections 1 and 2 have been completed as required, the candidate is to sign the acknowledgement at Section 3.
- d. Two copies of the form are to be made:
- e. The original is to be sent by the QPT to the appropriate AFCC/MFBC via e-mail.
 - 1. One copy is to be handed to the candidate
 - 2. The second copy is to be retained by the Fitness Centre for their records and as part of the audit trail.

Schedule 11 – Notification of Intellectual Property Rights (IPR) Restrictions (i.a.w. Clause 7)

Part A – Notification of IPR Restrictions

1. Contract Number 703883451				
2. ID #	3. Unique Technical Data Reference Number / Label	4. Unique Article(s)* Identification Number / Label	5. Statement Describing IPR Restriction	6. Ownership of the Intellectual Property Rights
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

* 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)

Insert PBS here or Modular Breakdown Structure or Not Applicable

Completion Notes

Part A

If any information / technical data that is deliverable or delivered under the relevant Contract conditions is, or may be, subject to any IPR restrictions (or any other type of restriction which may include export restrictions) affecting the Authority's ability to use or disclose the information / technical data in accordance with the conditions of any resulting Contract, then the Contractor must identify this restricted information / technical data in this Part A. Otherwise, the Authority shall treat such information in accordance with the same rights under the Contract it would enjoy should no restrictions exist.

For example, any of the following must be disclosed:

- a) any restriction on the provision of information / technical data to the Authority; any restriction on disclosure or the use of information by, or on behalf of, the Authority; any obligations to make payments in respect of IPR, and any patent or registered design (or application for either) or other IPR (including unregistered design right) owned or controlled by you or a third party;
- b) any allegation made against the Contractor, whether by claim or otherwise, of an infringement of IPR (whether a patent, registered design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of the Contract or subsequent use by or for the Authority of any Contract deliverables;
- c) the nature of any allegation referred to under sub-paragraph (b) above, including any request or obligation to make payments in respect of the IPR of any confidential information and / or;
- d) any action the Contractor needs to take, or the Authority is requested to take, to deal with the consequences of any allegation referred to under sub-paragraph (b) above.

Block 1	Enter the associated Invitation to Tender (ITT) or Contract number as appropriate.
Block 2	No action – This sequential numbering is to assist isolation and discussion of any line item
Block 3	Identify a unique reference number for the information / technical data (i.e. a Contractor's document or file reference number) including any dates and version numbers. Documents may only be grouped and listed as a single entry where they relate to the same Article and where the restrictions and IPR owner are the same.
Block 4	Identify the Article(s) associated with the information / technical data by entering a unique identification number / label for the Article(s). This may range from platform level down to sub-system level. This is to enable the Authority to quickly identify the approximate technical boundary to any user rights limitation (e.g. The RADAR or Defensive Aid Sub-System etc). This identification shall be at the lowest level of replaceability of the Article(s) or part of it to which the

	<p>restrictions apply (i.e. if the restrictions apply to a sub-system the parent system should not be used to identify the restriction boundary). <u>Any entry without a unique identifier shall be treated as a nil entry.</u></p> <p>NOTE: The Authority does not accept any IPR restrictions in respect of the physical Articles themselves. Block 4 is solely to provide an applied picture to any technical data stated under Block 3 as having IPR restrictions.</p>
Block 5	This is a freeform narrative field to allow a short explanation justifying why this information / technical data has limited rights applying to it.
Block 6	Identify who is the owner of the IPR in the information / technical data (i.e. copyright, design right etc). If it is a sub-contractor or supplier, please identify this also.

Part B

If neither hardware nor software is proposed to be designed, developed or delivered as part of the Contract, Part B should be marked “NIL RETURN”.

Otherwise, the Contractor must include a System / Product Breakdown Structure (PBS) in a format which is consistent with ISO 21511 and / or the configuration requirements of DEFSTAN 05-057, unless an alternative format better represents your design configuration. For software, a modular breakdown structure must be provided. For reasons of clarity, it is acceptable to provide several levels of breakdown if this assists in organising the configuration of the Articles.

Details provided under Part B shall not imply any restriction of use over the Contract Articles, nor any restriction on associated technical data to be delivered under the Contract. Any restrictions of such technical data must be identified within Part A.

Against each unique item within the PBS / module breakdown, one of the following categories shall be recorded:

- a) (PVF) - Private Venture Funded - where the article existed prior to the proposed Contract and its design was created through funding otherwise than from His Majesty's Government (HMG).
- b) (PAF) - Previous Authority Funded (inc. HMG Funded) - where the article existed prior to the proposed Contract and its design was created through Previous Authority Funding.
- c) (CAF) - Contract Authority Funded (inc. HMG Funded) - where the article did not exist prior to the Contract and its design will be created through Contract Authority Funding under this Contract.
- d) (DNM) Design Not Mature - where the article / design configuration is not yet fixed.

In combination with one of categories (a) to (d) above, the Contractor shall further identify where an item has, or will have, foreign export control applying to it, through use of the further following category:

- e) (FEX) Foreign Export Controlled

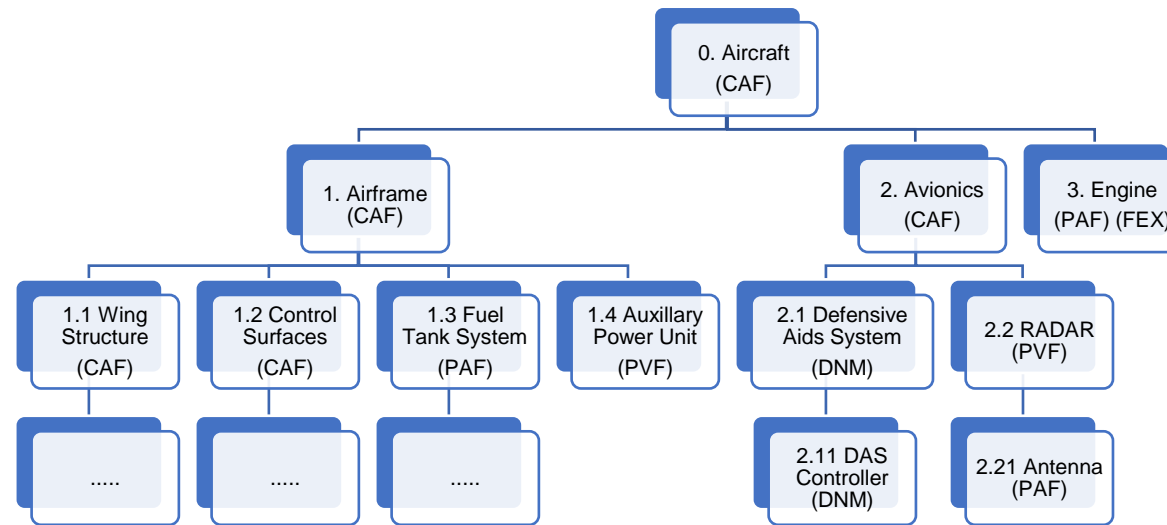
Notes:

1. During the term of the Contract the Contractor may transition any items identified as category (d) above into category (b) or (c). Transitions from category (d) into category (a) may only be made with the express written agreement of the Authority's Senior Commercial Officer, and by following the amendment process set out in the Contract.

2. It is acceptable to specify the highest level of structure to which the category (a), (b) or (c) applies (i.e. there is no need to specify each sub-system / componentry if the entirety of the parent system was for example, Private Venture Funded). See guidance examples overleaf.
3. For the avoidance of doubt, where a parent system did not exist prior to the Contract yet makes use of Private Venture Funded Articles, it must be identified as (CAF). The Private Venture Funded sub-components / sub-systems can be identified as PVF.
4. Where items are identified as category (b), the Contractor should provide the number(s) of the previous Contract(s) under which the design was created and the Previous Authority Funding was applied.

Example PBS

A theoretical pictorial example is given below but it is to be noted that the configuration may equally be dealt with in a hierarchal tabularised format.



The diagram above indicates a highly simplified and hypothetical Contract scenario dealing with the procurement of a new air asset.

- i. The proposed new aircraft would be considered Contract Authority Funded (CAF) at its top level.
- ii. Items denoted as Private Venture Funded (PVF) would generally indicate that it and all of its sub-components have been funded by sources other than HMG. In this instance there is no need to proceed down the product breakdown structure any further (see 1.4), except unusually where a generally PVF regarded item has incorporated a Previous Authority Funded (PAF) item (see 2.21).
- iii. The proposed design is making use of a PAF engine.
- iv. This engine has Foreign Export Control (FEX) applying to items within it.
- v. The Defensive Aids System at 2.1 is covered as part of the Contract but the exact configuration and design has not yet been fixed "Design Not Mature" (DNM).
- vi. It is not feasible for a parent PVF system to make use of a CAF item; the parent system configuration would not have existed prior to the Contract.

Schedule 12 – DEFFORM 532 Personal Data Particulars

This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

Data Controller	<p>The Data Controller is the Secretary of State for Defence (the Authority).</p> <p>The Personal Data will be provided by:</p> <p><i>Recruitment and Attraction (RN), HMNB Portsmouth; HQ Recruitment & Selection (RAF), RAF Cranwell. However, the personal information given to the Service provider will originate from the candidates themselves.</i></p>
Data Processor	<p>The Data Processor is the Contractor.</p> <p>The Personal Data will be processed at:</p> <p><i>[Tenderer to complete - insert address(es) and contact details]</i></p>
Data Subjects	<p>The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: <i>[please specify]</i></p> <p><i>Members of the public who have submitted an application for a role in the Royal Navy or Royal Air Force.</i></p>
Categories of Data	<p>The Personal Data to be processed under the Contract concern the following categories of data: <i>[please specify]</i></p> <p><i>Candidate name, address, date of birth, Unique Reference Number, weight, height – all for the purposes of assessing fitness and reporting result back to recruiting organisation. Also, Service Provider (SP) will conduct a brief questionnaire prior to testing as a duty of care to ensure that the candidate has declared no underlying conditions that could be exacerbated by the fitness test – this may also include a blood pressure measurement.</i></p> <p><i>(Details of questionnaire to be provided by winning</i></p>

	<i>bidder).</i>
Special Categories of data (if appropriate)	<p>The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>[please specify]</i></p> <p><i>Blood pressure measurement, and yes/no answers to medical questionnaire as outlined above (questions tbc).</i></p>
Subject matter of the processing	<p>The processing activities to be performed under the contract are as follows: <i>[please specify]</i></p> <p><i>Booking of fitness test by candidate directly with the Service provider (SP collection of contact details and DOB); initial questionnaire and blood pressure measurement by SP to meet duty of care requirements; recording of fitness test results and transmission of results to recruiting organisation to enable the recording of the candidate's result on the Recruiting Information System.</i></p>
Nature and the purposes of the Processing	<p>The Personal Data to be processed under the Contract will be processed as follows: <i>[please specify]</i></p> <p><i>Booking of fitness test by candidate directly with the Service provider (SP collection of contact details and DOB); initial questionnaire and blood pressure measurement by SP to meet duty of care requirements; recording of fitness test results and transmission of results to recruiting organisation to enable the recording of the candidate's result on the Recruiting Information System.</i></p> <p><i>(The details of how the data are collected, stored and how the results are communicated to recruiting organisations are to be confirmed with the winning bidder).</i></p>
Technical and organisational measures	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: <i>[please specify]</i></p> <p><i>(Details to be provided by the winning bidder).</i></p> <p><i>[Provide an overview of the measures described in the System Requirements, Statement of Work and/or the controls required in accordance with the Cyber Risk</i></p>

	<i>Profile relevant to the Contract, as detailed in Annex A to Def Stan 05-138. Examples include anonymisation, authorised access, data processed on closed/restricted systems]</i>
Instructions for disposal of Personal Data	<p>The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): <i>[please specify]</i></p> <p><i>Personal data stored by the Service Provider must be retained for no longer than 12 months from the date of the fitness test.</i></p> <p><i>(Details of how data is stored and disposed of securely will be agreed with winning bidder).</i></p>
Date from which Personal Data is to be processed	<p>Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here:</p> <p>From date of contract commencement.</p>

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.



MOD Terms and Conditions

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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 therewith.

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 clauses 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 Supplier Management Team
Spruce 3b # 1301
MOD Abbey Wood,
Bristol, BS34 8JH

and emailed to: 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
 - (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

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.I.

(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: description of the Contractor Deliverable;

(a) the full thirteen digit NATO Stock Number (NSN);

(b) the PPQ;

(c) maker's part / catalogue, serial and / or batch number, as appropriate;

(d) the Contract and order number when applicable;

(e) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;

(f) shelf life of item where applicable;

- (g) 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);
 - (h) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
 - (i) 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 supplier, then the supplier 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 13.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 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) Supplier 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 25.a or 25.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 <https://www.forestryengland.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).

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 suppliers 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 of its suspicion and reasons therefore;
- (2) where reasonably possible, 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) 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

- (4) 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
- Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Materiel then it may reject the Contractor Deliverable, part or consignment under 30.a and 30.b (Rejection).
- d. In addition to its rights under 30.a and 30.b (Rejection), where the Authority reasonably believes 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).
- e. Where the Authority intends to exercise its rights under clause 30.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at their own risk and expense and subject to any reasonable controls specified by the Authority, 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 satisfied does not contain Counterfeit Materiel.
- f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 30.j, 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 be shared with the Contractor; and/or
 - (4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at clauses 30.f.(1) to 30.f.(3) shall not constitute acceptance under Condition 29 (Acceptance).

- g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.f.(4) then the balance shall accrue to the Contractor.
- h. The Authority shall not use a retained Contractor Deliverable or consignment other than as permitted in clauses 30.c – 30.j.
- i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- j. 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.j except 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.(4). 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 suppliers restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within [X] 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 [X] 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 33.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 suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

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

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

(1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 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 suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

(2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

(3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

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

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

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

n. The general authorisation and indemnity is:

(1) clauses 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;
- (0) 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;
- (1) 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 (Supplier 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.b 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 respect 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.
- c. 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.
- d. 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).
- e. 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 37 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 38.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.
- f. 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 supplier.

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.

Additional Conditions

44. The project specific DEFCONS and DEFCON SC variants that apply to the Contract are:

DEFCON 5J (Edn 11/16) - Unique Identifiers
 DEFCON 76 SC2 (Edn 11/22) - Contractor's Personnel at Government Establishments
 DEFCON 532B (Edn 09/21) - Protection of Personal Data
 (Where Personal Data is being processed on behalf of the Authority)
 DEFCON 647 SC2 (Edn 05/21) - Financial Management Information
 DEFCON 658 SC2 (Edn 10/22) - Cyber
 Further to DEFCON 658 the Cyber Risk Level of the Contract is Moderate, as defined in Def Stan 05-138

45. The special Conditions that apply to the Contract are:

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

a. the Contract Deliverables and/or Services contain any Russian/Belarusian products and/or services; or
b. 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:

(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

(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.

45.2 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.

45.3 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.

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

45.5 Security Clearances

The Contractor shall ensure that they arrange for any relevant security clearances (including BPSS or SC) to be in place when their personnel are required deliver any goods or services on Authority sites.

45.6 Options

In addition to the requirements detailed at Items 1 to 4 of the Schedule of Requirements, the Contractor hereby grants to the Authority the following irrevocable options to purchase the Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus as detailed at Items 5 to 8 of the Schedule of Requirements, in accordance with the terms and conditions set out in this contract or any such subsequent contract or contracts where such options are taken up, it being agreed that the Authority has no obligation to exercise such options.

Option 1: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Navy and Royal Marines as outlined in the Statement of Requirements – YEAR 3 at a firm price of £to be confirmed at Contract Award, in accordance with the delivery schedule at Schedule of Requirements line 5, provided that the Authority exercises such an option by no later than 01 April 2025.

Option 2: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Air Force and Royal Air Force Reserves as outlined in the Statement of Requirements- YEAR 3 at a firm price of £to be confirmed at Contract Award, in accordance with the delivery schedule at Schedule of Requirements line 6, provided that the Authority exercises such an option by no later than 01 April 2025.

Option 3: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Navy and Royal Marines as outlined in the Statement of Requirements – YEAR 4 at a firm price of £to be confirmed at Contract Award, in accordance with the delivery schedule at Schedule of Requirements line 7, provided that the Authority exercises such an option by no later than 01 April 2026.

Option 4: Provision of Pre-Joining Fitness Tests and Pre-Joining Fitness Tests Plus for the Royal Air Force and Royal Air Force Reserves as outlined in the Statement of Requirements – YEAR 4 at a firm price of £to be confirmed at Contract Award, in accordance with the delivery schedule at Schedule of Requirements line 8, provided that the Authority exercises such an option by no later than 01 April 2026.

The Authority may exercise any of the options above in the stated quantities varied within a range of + / - 10% (ten per cent), as well as in the stated quantities and the option prices shall apply equally to the quantities so varied.

The Authority shall have the right to exercise the options by the specified dates or within such further period as corresponds to the aggregate of any period(s):

a. of delay in the delivery programme whether constituting any breach of the Contract or resulting from any force majeure event, or

b. for the duration of which the Authority is prevented from exercising any such option due to any other breach of the Contract by the Contractor.

The Authority shall not be obliged to exercise the options.

The option prices detailed are firm prices.

46. The processes that apply to the Contract are:

Impediments

The Contractor shall notify the Authority as soon as they become aware of any circumstance which will impact on their ability to deliver any of the requirements or meet any of the stated timescales.

Tender Proposal

Requirements to be delivered in accordance with this contract and, where it does not conflict with this contract, in line with proposal included in tender.

Performance Management

The following shall apply in addition to any specific Publishable Performance Information or Key Performance Indicators detailed in Schedule 9.

The Contractor providing the PJFT/PJFT+ tests is to book the candidate test within 14 calendar days of receiving their phone call. (As stated in the Schedule of Requirements, Schedule 10.1, paragraph 12).

Results of the candidate test are to be recorded (emailed) back to the appropriate AFCO by the Contractor within 1 working day of the test being completed. (As stated in the Schedule of Requirements, Schedule 10.1, paragraph 13).

Management Information (MI) must be provided to the Authority by the Contractor on a monthly basis, detailing numbers of tests undertaken by location; pass and failure rates; number of practice sessions total, by candidate and by location; Quality Assurance undertaken in the preceding month and unscheduled unavailability during reporting period, as a minimum. (As stated in the Schedule of Requirements, Schedule 10.1, paragraph 14).

If, at any time, any of the goods or services provided under the Contract do not meet the required standard or quality then the Authority will not be obligated to buy any more services unless it is satisfied that the required standard or quality will be met.

Where the Contractor is unable to provide the required goods/services within the timescales required, the Authority shall be entitled to procure those goods/services from other providers.

If the Authority is able to procure goods/services, which are similar to those listed in this contract, at significantly lower prices than those listed in this contract then the Authority shall be entitled to ask the Contractor to provide a reduced price and/or shall be entitled to procure those goods/services from other providers.

If, in order to deliver the goods/services, the Contractor sources anything through their supply chain subcontractors they shall not charge any additional mark up or profit, on those costs they have paid, when calculating prices to be charged to the Authority.

47. Limitations on Liability

Definitions

1.1 In this Condition [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 subcontractors 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 x years /on x date] 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

1.2 Neither Party limits its liability for:

- 1.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 1.2.2 fraud or fraudulent misrepresentation by it or its employees;
- 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
- 1.2.4 any liability to the extent it cannot be limited or excluded by law.

1.3 The financial caps on the Contractor's liability set out in Clause 1.4 and 1.5 below shall not apply to the following:

- 1.3.1 for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:
 - 1.3.1.1 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and condition 33 (Third Party IP – Rights and Restrictions);
 - 1.3.1.2 the Contractor's indemnity in relation to TUPE;
- 1.3.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
 - 1.3.2.1 the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts);
 - 1.3.2.2 the Authority's indemnity in relation to TUPE;
- 1.3.3 breach by the Contractor of DEFCON 532B (SC2) and Data Protection Legislation; and
- 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.
- 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 1.4 and/or 1.5 below.

Financial limits

1.4 Subject to Clauses 1.2 and 1.3 and to the maximum extent permitted by Law:

- 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:
 - 1.4.1.1 in respect of DEFCON 76 (SC2) £0 in aggregate;
 - 1.4.1.2 in respect of condition 42b £2,601,000 in aggregate;
 - 1.4.1.3 in respect of DEFCON 611 (SC2) £0 in aggregate; and
 - 1.4.1.4 in respect of condition 27d £0 in aggregate;
- 1.4.2 without limiting Clause 1.4.1 and subject always to Clauses 1.2, 1.3 and 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 any service credit or performance provisions), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £2,601,000 in aggregate.
- 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 1.4.1 and 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 1.4.1 and 1.4.2 of this Contract.

1.5 Subject to Clauses 1.2, 1.3 and 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.

1.6 Clause 1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

1.7 Subject to Clauses 1.2, 1.3 and 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:

- 1.7.1 indirect loss or damage;
- 1.7.2 special loss or damage;
- 1.7.3 consequential loss or damage;
- 1.7.4 loss of profits (whether direct or indirect);
- 1.7.5 loss of turnover (whether direct or indirect);
- 1.7.6 loss of business opportunities (whether direct or indirect); or
- 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.

1.8 The provisions of Clause 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:

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:

- 1.8.1.1 to any third party;
- 1.8.1.2 for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
- 1.8.1.3 relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

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

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);

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;

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

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;

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);

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

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

1.9 If any limitation or provision contained or expressly referred to in this Condition [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 [1].

Third party claims or losses

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 33 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:

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

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

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.