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Ministry of Defence

Defence Digital

Contract Number: 706216450

Hyperion Coherence Phase

28 Dec 22 – 31 Mar 23

**Between the Secretary of State for
Defence of the United Kingdom of Great
Britain and Northern Ireland**

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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 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 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 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 it's 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.

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2. Duration of Contract

- a. This Contract comes into effect on the Effective Date of Contract and will expire automatically on the completion of the Coherence Phase (as agreed in accordance with Schedule 3) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.
- b. The parties acknowledge that the Contractor has agreed to enter into this contract to facilitate the timely completion of the Coherence Phase Services.
- c. The Live stage is conditional on the Parties entering into:
 - (1) a Bespoke contract tailored to the services that will be provided during the Live Stage (namely the agile software development services and associated services). This Contract shall not apply to the Live Stage.;
 - (2) The Tri-partite Agreement; and
 - (3) The Licence Agreement.
- d. The Parties shall use reasonable endeavours to procure that the condition set out in 2.c is satisfied as soon as practicable and in any event no later than the completion of the Coherence Phase (as agreed in accordance with Schedule 8).

3. Entire Agreement

This contract constitutes the entire agreement between the Parties relating to the subject matter of the Coherence Services. 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 judgement, 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

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actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out 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 judgement, 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 arbitration shall be in 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, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in 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 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 to 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 1-46 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 order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers inconsistency to be material to its rights and obligations under the Contract, then the

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- c. 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 30 and subject to clause 6.c, the Contract may 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 Procedure) (where used);
 - (2) the Authority's offer set out in a serially numbered amendment letter issued by the Authority to the Contractor; and
 - (3) the Contractor's unqualified acceptance of such an offer as evidenced by the Contractor's duly signed DEFFORM 10B.
- 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 632 (SC2) or DEFCON 127. Where DEFCON 632 (SC2) is used, the Contractor shall make appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 632 (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).

7. Changes to the Specification

- a. 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.
- b. 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.

8. Authority Representatives

- a. Any references 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 references to the Authority's Representatives in accordance with this Condition 7.

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- 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 intrusion, 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).

9. 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 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.

10. 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.

11. 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.

12. 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.

13. Transparency

- a. Subject to Clause 13b but notwithstanding Condition 14 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

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- b. Before publishing the Transparency Information to the general public in accordance with clause 13.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 (Contractor's Commercially Sensitive Information).
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 13.b. The Contractor acknowledges and accepts that their representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter which the Authority shall exercise its own discretion, subject to the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations Act 2004.
- d. For the avoidance of doubt, nothing in this Condition 13 shall affect the Contractor's rights of law.

14. Disclosure of Information

- a. Subject to clauses 14.d to 14.i and Condition 13 (Transparency) 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 the Information except to the extent necessary for the purposes 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 all employees are aware of the Contractor's arrangements for discharging the obligations at Clauses 14.a and 14.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 14.a, 14.b, 14f, 14g and 14h 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;

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- (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 not be in breach of this Condition 14 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 14.

- f. The Authority may disclose 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 14g below, on a confidential basis to a professional advisor, consultant or other person engaged by any entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;
 - (5) subject to Clause 14g 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 14.
- g. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 14f(4) or 14f(5) above, the Authority will endeavour to provide the Contractor with three(3) Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 14f(3) above, if reasonably requested by the Contractor within two(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 14.
- h. Before sharing any Information in accordance with Clause 14f, 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").

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- j. To the extent permitted by the time for compliance under the Act or 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.
- k. Nothing in this Condition 14 shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

15. 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.

16. Change of Control of Contractor

- a. The Contractor shall notify the Representative of the Authority at the address given in Clause 16b, 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 an 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 & Acquisition Section
Strategic Supplier Management Team
Spruce 3b #1301
MOD Abbeywood
Bristol, BS34 8JH
and emailed to: DefComrclSSM-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(6) months of the Authority being notified in accordance with Clause 16a. The Authority shall act reasonably in exercising its right of termination under this Condition 16.
- e. If the Authority exercises its right to terminate in accordance with Clause 16d, 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

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- f. termination of the Contract. Any payment under this Clause 16e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- g. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority additional to the Authority's rights set out in this Condition 16.

17. Environmental Requirements

The contractor shall in all of 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.

18. 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 Controller 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 18a of this Condition 18, and subject to the provisions of Condition 14 (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 18 shall be retained for a period of at least six (6) years from:
 - (1) the end of the Contract term;
 - (2) the termination of the Contract; or
 - (3) the final payment,
 whichever occurs latest.

19. 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:

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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;

- (1) 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;
- (2) 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.

20. 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

21. 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 and diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of Clause 21b shall survive any performance, acceptance or payment pursuant to the Contract and shall extend 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

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- (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.
- e. The Authority shall:
 - (1) co-operate with the Contractor in all matters relating Coherence Services;
 - (2) subject to DEFCON 76, provide the Contractor its agents, Subcontractors, consultants and employees (as approved by the Authority in accordance with this Contract) in a timely manner and at no charge, access to the Authority's premises, office accommodation, data and other facilities as reasonably required by the Contractor; and
 - (3) provide to the Contractor in a timely manner all documents, information, items and materials in any form reasonably required by the Contractor in connection with the Coherence Services.

22. Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements 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 23 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

23. 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 PQQ. If a standard or level of Packaging (including the PQQ) 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 81-014 (Part 1). In addition, the following requirements apply:
 - (1) The Contractor shall provide Packaging which:

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- (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 the need to breach the package; and
 - (c) is compliant with statutory requirements and this Condition 23.
- (2) The Packaging is 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 PQQ 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 'PQQ packages' and shall be marked in accordance with Clauses 23i to 23l. References to 'PQQ 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 23i to 23k.
- 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); and
 - (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 the 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 23f and 23g 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 SEOC SCP-SptEng-Pkg
 MOD Abbeywood
 Bristol, BS34 8JH
 Tel: +44(0)30679-35353
DESSEOCSCP-SptEng-Pkg@mod.uk
 - (b) The MPAS Documentation is also available on the DStan website.

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- (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 existing usable SPIS, or one that may be easily modified.
- (5) Where there is 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 23f(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 23f(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 23f.
 - (b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - i. a list of all SPIS which have been prepared or revised against the Contract; and
 - ii. a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
 - (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 23g(1).
 - (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, then follow Clause 23g(1).
 - (3) Where the Contractor or their Subcontractor is unregistered 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 23g(1).
 - (4) Where the Contractor or their Subcontractor is not a PDA but is registered, they should follow Clauses 23g(1) and 23g(2).
- 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.

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- 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 23 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 23i
 - (2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:
 - (a) description of the Contractor Deliverable;
 - (b) the full thirteen(13) digit NATO Stock Number (NSN);
 - (c) the PPQ;
 - (d) maker's part/catalogue, serial and/or batch, as appropriate;
 - (e) the Contract and order number when applicable;
 - (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
 - (g) shelf life of item where applicable;
 - (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 081-041);
 - (i) any statutory hazard markings and any handling markers, including the mass of any package which exceeds 3kg gross; and
 - (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PQQ 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 the packages:
 - (1) the full thirteen(13) digit NSN;
 - (2) denomination if 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 etc, are defined in Def Stan 081-041 (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 bar code markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet).

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- I. 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;
 - j. 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;
 - k. the CP&F generated shipping label; and
 - l. 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 18 (Contractor's Records).
 - q. This Condition 23 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.
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- t. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 081-041 (Part 1) "Packaging of Defence Material". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
- u. Unless specifically stated otherwise in the Invitation to Tender or the Contract, reference to and 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.
- v. In the event of conflict between the Contract and DEF STAN 81-041, the Contract shall take precedence.

24. Supply of Data for Hazardous Materials or Substances in Contractor Deliverables

- a. The Contractor shall provide to the Authority:
 - i. for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Classification, Labelling and Packaging (GB CLP) Regulation; and
 - ii. for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work Act 1974, at the time of supply.

Nothing in this Condition 24 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

- b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the extant UK REACH Regulation:
 - i. the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall the SDS and forward it to Authority and to the address listed in Clause 24h below; and
 - ii. the Authority if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.
- c. If the Contractor is required, under, or in connection with the Contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
- d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
- e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, 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 Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the Contractor shall additionally provide details of:

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- i. activity; and
- ii. the substance and form (including any isotope);
- g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details 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 24, including any related information to be supplied in compliance with the Contractor's statutory duties under Clause 24a(1) and 24b(1), any information arising from the provisions of Clauses 24e, 24f and 24g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) 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). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MD WORD format, or, if only hardcopy is available, to the addresses below:
 - i. Hard copies to be sent to:
Hazardous Stores Information System (HSIS)

Department of Safety & Environment, Quality and Technology (DS & EQT)

Spruce 2C, #1260
MOD Abbeywood(South)
Bristol, BS34 8JH
 - ii. Emails to be sent to:
DESTECH-QSEPEnv-HSISMulti@mod.gov.uk
- i. Failure by the Contractor to comply with the requirements of this Condition 24 shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning Hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 44 (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 44.
- j. Where the 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:
 - i. shall comply with the Contract Specification; and
 - ii. must originate either:
 - (a) from a Legal and Sustainable source; or
 - (b) from a FLEGT-licenced or equivalent source.
- b. In addition to the requirements of Clause 25a, 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.

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- 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 25a or 25b 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 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 25c, 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 25a or 25b 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 18 (Contractor's Records).
- g. Notwithstanding Clause 25c, 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 25a or 25b 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 25b.
- i. The statistical reporting requirement at Clause 25j 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 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 7's (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 the Packaging from:
 - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) and

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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 (ISPM 15) (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 of 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 items.
- c. The Contractor shall consider the CofC to be a record in accordance with Condition 18 (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 Information called for at Clause 26d. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 18 (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 27a are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

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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 28b; 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 28c.

29. Acceptance

- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 9 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

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- (1) the Authority does any act in relation to the Contractor Deliverables which is inconsistent with the Contractor's ownership; or
- (2) the time limit in which to reject the Contractor Deliverables defined in Clause 30b has elapsed.

30. Rejection and Counterfeit Material**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 30a 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 Material:

- c. Where the Authority suspects that any Contractor Deliverable or consignment of the Contractor Deliverables contains Counterfeit Material, it shall:
 - (1) notify the Contractor of its suspicion and reasons therefore;
 - (2) where reasonably possible, and if requested by the Contractor within ten (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 Deliverables or consignment and/or
 - ii. obtain a sample thereof for validation or testing purposes.
 - (3) give the Contractor a further twenty (20) Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at Clause 30c(2i) or the provision of a sample at Clause 30c(2ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Material; 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 Material. Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverable contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under Clause 30a and 30b (Rejection).
- d. In addition to its rights under Clause 30a and 30b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Material, it shall be entitled to:
 - (1) retain any Counterfeit Material; and/or
 - (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Material 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 30d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange

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at their own risk and expense and subject to any reasonable controls specified by the Authority, for:

- (1) the separation of Counterfeit Material from any Contractor Deliverable or part of the 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 Material.
- f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with Clause 30d, including where the Authority permits the Contractor to remove non-Counterfeit Material under Clause 30e, but the Contractor fails to do so within the period specified by the Authority and subject to Clause 30j, 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 the rights granted at Clauses 30f(1) to 30f(3) shall not constitute acceptance under Condition 29 (Acceptance).

- g. Any scrap or other disposal payment received by the Authority shall be set off against any amount due to the Authority under Clause 30f(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under Clause 30f(4) then the balance shall accrue to the Contractor.
- h. The Authority shall not use a retained Article or consignment other than as permitted in Clause 30c to 30j.
- i. The Authority may without restriction report a discovery of Counterfeit Material and disclose information necessary for the identification of similar material 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 30c to 30j except where it has been determined in accordance with Condition 41 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with Clause 21c. In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with Clause 30c.

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.

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- 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 33 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: His 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 material 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 33 material 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 material for which a foreign export licence or import licence or authorisation is required, the Contractor shall include 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.

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- e. During the term of the Contract and for a period of up to two (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 licenced or authorised item or licenced or authorised information from the UK to a non-licenced 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 of the Contractor is best placed in all circumstances 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 licencing authority. Where the Contractor has an objection, the Parties shall meet with 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 exports; 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 a 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 33e or 33f 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 33. Where it is not possible to include equivalent terms to those set out in this Condition 33, 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 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 33k(1) or 33k(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the

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- m. 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 in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- n. If the information to be provided under Clause 33l 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 33l.
- o. 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 33l or 33m 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 is referred to in Clauses 33l or 33m by issuing an updated DEFFORM 528 to the Authority.
- p. For a period up to two (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 33l or 33m 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 Clauses 33l or 33m by issuing an updated DEFFORM 528 to the Authority.
- q. Where following receipt of material from a Subcontractor or any of their other suppliers restrictions are notified to the Contractor by the 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.
If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed with
- r. a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 (Formal Amendments to the Contract) or as otherwise, may be provided by the Contract, or to terminate the Contract. Except as set out in Clause 33r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all 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.
- s. In the event that the restrictions notified to the Authority pursuant to Clause 33l were known 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 33n and 33p 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 33l, termination under Clause 33t will be in accordance with Condition 44 (Material Breach) and the provisions of Clause 33v will not apply.
- t. The Authority shall use reasonable endeavours to identify any export control restrictions applying to material to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide material necessary to enable the Contractor to

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- u. perform the Contract or in respect of which the Services are to be provided, and that material is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions 33k, 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 material to the Contractor.
- v. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such material 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.
- w. Where:
 - (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause 33s or 33t 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 43 (Termination for Convenience) and as referenced in the Contract.

- x. Pending agreement of any amendment of the Contract as set out in Clause 33q or 33u, 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;

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- (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 34a does not apply in respect of Contractor Deliverables normally available from the Contractor as Commercial Off the Shelf (COTS) item or service.
- b. If the Information required under Clause 34a 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, by 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 34 shall not apply if:
 - (1) the Authority has made or makes an admission of any such 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 34c 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 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 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 subject of a UK Patent or UK Registered Design for the purpose of performing the Contract.
 - g. If, under Clause 34a, 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

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- (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 Section 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 UK 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. Limits of liability reference Intellectual Property will be excluded from this Contract and will form part of the Tri-partite Agreement. The Tri-partite Agreement will have precedence over this Contract for limits of liability reference Intellectual Property.
 - 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 34a.
 - k. Where authorisation is given by the Authority under Clause 34e, 34f or 33g 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 Authority shall assume all liability and indemnify the Contractor, 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.
 - m. The general authorisation and indemnity is:
 - (1) Clauses 34a to 33l 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 a claim or action appears to relate to an infringement

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- (4) which is subject of an indemnity or authorisation given under this Condition 34 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;
 - (5) the Party benefiting from the indemnity or authorisation shall allow the other Party, as 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;
 - (6) following a notification under Clause 33m(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;
 - (7) 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.
- n. 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.
 - o. 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.
 - p. 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.

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 35a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for the drawback
- c. of the 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 36b the Contractor will be required to register their details (Supplier on-boarding) on the Contract, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with Clause 36a, the Authority will consider and verify that invoice in a timely fashion.

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- c. The Authority shall pay the Contractor any sums due under such invoice no later than a period of thirty (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 36a 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 36c 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 to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where the supply of Contractor Deliverables comes within 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
- e. Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- f. 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

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to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty(30) calendar days of the written request for payment of any such by the Contractor.

- g. 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 41 (Dispute Resolution).
- h. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 37b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other Contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

38. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 11 (Assignment of Contract), the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 38 shall be subject to:
 - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under Condition 35;
 - (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 38b and 38c(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 38a, 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 Clause 38(1) and 38a(2); and
 - (2) notifies the Authority of the Assignee's contact information and bank details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Clauses 38a(1) and 38a(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.

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- 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 39b(1) above, and there is an undue delay on considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 39b(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 39b(1) to 39b(4).

40. Limitations of Contractors Liability

- a. Subject to Clause 40b the Contractor's liability to the Authority in connection with this Contract shall not exceed £1M in aggregate.
- b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:
 - (1) for any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
 - (2) in relation to any matter governed by Clause 40b above, where any applicable limitation of liability forming part of that provision has been agreed by the Authority in reliance on information (including in relation to insurance) submitted by or on behalf of the Contractor prior to contract award, such information being inaccurate or untrue;
 - (3) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or Subcontractors;
 - (4) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;
 - (5) in relation to the termination of this Contract on the basis of abandonment by the Contractor;
 - (6) for breach of the terms by Section 2 of the Supply of Goods and Services Act 1982; or
 - (7) for any other liability which cannot be limited or excluded under general (including statute and common) law.
- c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by English (including statute and common) law.

Termination**41. 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 41a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 41b 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.

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- 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.

42. 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 based 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 drawn 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 should be wound-up; or
 - (14) the appointment of a Receiver or manager or administrative Receiver.

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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 42a(9) to 42a(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 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 of 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 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 42, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this Condition 42, 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.

43. Termination for Convenience

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- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor as 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
- b. 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 Contract being terminated but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
- c. 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 to 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 of any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Clauses 43b(2) and 43b(3) of this Condition 43.
- d. Where this Condition 43 applies (and subject always to the Contractor's compliance with any direction given by the Authority under Clause 43b):
 - (1) The Authority shall take over from the Contractor as a fair and reasonable price all unused and undamaged material 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 material 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 material ; 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 material 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.
- e. The Authority shall (subject to Clause 43e below and to the Contractor's compliance with any direction given by the Authority in Clause 43b 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 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.
- f. The Authority's total liability under the provisions of this Condition 43 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.

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- g. The Contractor shall include in any subcontract over £250,000 which it may enter into for purpose of the Contract, the right to terminate the subcontract under the terms of Clauses 43a to 43e except that:
- (1) the name of the Contractor shall be substituted for the Authority except in Clause 43c(1);
 - (2) the notice period for termination shall be 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 43.
- h. Claims for payment under this Condition 43 shall be submitted in accordance with the Authority's direction.

44. 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 44a 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.

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

DEFCON	Edition	Title
23	06/21	Special Jigs, Tooling and Test Equipment
76	06/21	Contractor's Personnel at Government Establishments
532A	08/20	Protection of Personal Data
611	02/16	Issued Property
658	09/21	Cyber
659A	09/21	Security Measures
660	12/15	Official – Sensitive Security Requirements
671	10/22	Plastic Packaging Tax. To be included on all MOD contracts; where there is no plastic packaging or PPT payable through the life of a contract, the DEFCON is dormant.

47. The special Conditions that apply to the Contract are as follows:

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a. Payment

- (1) The Contractor shall be able to claim payment for Contractor Deliverables it has supplied under this Contract on acceptance of the final Contractor Deliverable by the Authority.

b. Intellectual Property

- (1) All Intellectual Property of any nature in the results generated in the performance of Coherence Services under the Contract and recorded in any written or other tangible form ("the Results") including rights in inventions, designs, computer software, databases, copyright works and information shall vest in the Contractor.
- (2) In accordance with and subject to the Terms and Conditions of a separate Tri-partite Agreement for the assignment of the Intellectual Property in the Results to be agreed as between the Authority, the Contractor and the other UK Government department listed as a Party to such Tri-partite Agreement ("the Listed Government Department") the Contractor shall assign all the Intellectual Property in the Results to the Crown.
- (3) For clarification a separate Memorandum of Understanding (MoU) as between the Authority and the Listed Government Department governs the use of handling of Results by the Authority noting that the Results are a development of earlier work undertaken by the Listed Government Department the Intellectual Property in which is owned by the same. Owing to the sensitivity of the Results the Contractor's attention is drawn to the Security Aspects Letter, and DEFCONs 659A (Edn 09/21) and 660 (Edn 12/15) and the restraints on disclosure thereunder notwithstanding any initial vesting in the Contract.
- (4) The Contract is conditional upon execution of a separate licence agreement between the Contractor and the Listed Government Department relating to the ownership and use of Intellectual Property. All obligations under the Contract will remain outstanding until such licence is executed.

c. Precedence

- (1) If there is any dispute regarding the Terms and Conditions of the Agreements between the contracting Parties, including Limits of Liability, the following document precedence will prevail:
 - a. The Tri-partite Agreement
 - b. The Licence Agreement
 - c. The Contract

d. Task Authorisation Form (TAF) Process

- (1) All taskings raised under this contract shall be initiated and defined by the use of the Task Authorisation Form (TAF) at Schedule 10 (Task Authorisation Form) to the Contract. Following agreement of the task the TAF will be added to Schedule 2 – Schedule of Requirements - Table 2 TAF Payment Schedule; at the next suitable Contract Amendment.
- (2) Taskings may be proposed by either the Contractor or the Authority. All taskings shall use a unique serial number which shall be allocated by the Authority. The Contractor may allocate additional reference numbers for the convenience of their own internal systems.

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- (3) Upon receipt of a duly completed Part 1 of the TAF, the Contractor shall submit at Part 2 a Firm Price quotation. The quotation shall be valid for acceptance by the Authority for a minimum of sixty (60) Business Days or a period to be agreed between the Parties. The quotation should include:
- A full cost breakdown of labour rates, materials, expenses, travel and subsistence, brought-out and subcontract elements, identifying the applicable prevailing agreed labour and profit rates for that Financial Year.
 - Details of any proposed assumptions, exclusions or dependencies.
 - A statement confirming compliance with the Terms and Conditions of the Contract identifying any proposed changes for the Authority's consideration.
 - A payment plan providing a description, acceptance criteria and proposed dates of each milestone.
- (4) Upon receipt of a completed TAF Part 2, the Authority shall review the TAF Part 2 and either issue to the Contractor a signed TAF Part 3, signed by the Authority's representatives as detailed at Schedule 3 Annex A (DEFFORM 111) (Commercial Officer) to authorise the Contractor to commence work or following any clarification or negotiations the Authority shall:
- reject the tasking and request a revised or new TAF; or
 - order no further action.
- (5) No work shall be undertaken on the proposed tasking until the TAF has been authorised by the Authority representatives as detailed at Schedule 3 Annex A (DEFFORM 111) (Commercial Officer) in accordance with d. above. For the avoidance of doubt a serially numbered amendment letter as detailed in Condition 6 (Formal Amendments to the Contract) shall not be required to authorise the Contractor to commence work on the tasking. The Authority and the Contractor shall at appropriate add all TAFs agreed to that point in time to Schedule 2 Table 2 TAF Payment Table by the agreement of a serially numbered amendment letter as detailed in Condition 6 (Formal Amendment to the Contract).
- (6) In certain circumstances it may be necessary to terminate or postpone any work previously authorised and negotiate an appropriate cancellation or change to the TAF to be implemented by formal amendment to the Contract in accordance with Condition 6 (Formal Amendment to the Contract).

e. Travel, Accommodation and Subsistence Expenses

- (1) The Contractor may charge the Authority for any reasonable travel, accommodation, and subsistence expenses against the rate card below:

Location	Hotel and Subsistence	Travel Allowance – Return Trip
Bristol	£140	£0.45/mile or £80 (whichever is the lower number)
Corsham	£145	£0.45/mile or £85 (whichever is the lower number)
Farnborough	£130	£0.45/mile or £90 (whichever is the lower number)

- (2) The Authority will issue to the Contractor from time to time any relevant travel, accommodation and subsistence rates and guidance.

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f. Options

- (1) In consideration of the award of the Contract, the Authority hereby grants to the Contractor the irrevocable option(s), shown in the table below, to be exercised at any time during the period of the Contract once funding approval and FIRM price has been obtained.

Option	Description	Price (Each) £ Ex VAT (TBC subject to financial approval)
1	Hyperion Coherence Phase 2 3 month option 01 Apr 23 – 30 Jun 23 TAF to be raised	To be confirmed by TAF proposal
2	Hyperion Coherence Phase 3 3 month option 01 Jul 23 – 30 Sep 23 TAF to be raised	To be confirmed by TAF proposal
3	The Contractor will continue with the CHAT capability as detailed in the Phase 1 deliverables until the Authority confirms in writing, the CHAT capability is no longer to be supported by the Contractor. All reasonable costs will be paid by the Authority until cessation of the CHAT capability by written notice.	To be confirmed by TAF proposal

- (2) The option(s) may be exercised by the Authority individually or severally.
- (3) The Authority undertakes to notify the Contractor in writing no less than one (1) month prior to its intention to exercise an option prescribed.
- (4) No guarantee is given by the Authority that any of the options will be exercised.
- (5) Any amendment to the Contract will be issued by the Authority's Commercial Officer in accordance with Condition 6 (Formal Amendment to the Contract) to update the Contract to reflect the changes required as a result of the Authority exercising any of the options described.

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Schedule 1 – Definitions of Contract

Coherence Stage	mean the services to be provided after completion of the Discovery/Alpha and Alpha Extension Phases subject to clause 2c.
Articles	means the Contractor Deliverables (good and/or 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 Representative	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 8;
Business Day	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
Central Government Body	<p>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:</p> <ol style="list-style-type: none"> Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or 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;

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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;

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Contractor Commercially Sensitive Information	means the Information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
Contractor Deliverables	means the 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; or b. 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	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:

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

DBS Finance	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
DEFFORM	means the MOD DEFFORM series which can be found at https://www.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 27 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	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;

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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 specified on the Authority's acceptance letter;
Evidence	means either: <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

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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, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

Licence Agreement

a separate licence agreement between the Contractor and the Listed Government Department relating to the ownership and use of intellectual property.

**Listed Government
Department**

the department defined in the Tri-partite Agreement.

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Military Level Packaging	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	shall have the meaning described in Def Stan 81-041 (Part 1);
MPAS Registered Organ.	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;

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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 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;

Primary Packaging Quantity 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);

Recycled Timber means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers:

- a. pre-consumer reclaimed wood and wood fibre and industrial by-products;
- b. post-consumer reclaimed wood and wood fibre, and driftwood;
- c. reclaimed timber abandoned or confiscated at least ten years previously;

it excludes sawmill co-products;

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;

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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;

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, and details of any payments made by the Authority to the Contractor under the Contract;

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Tri-partite Agreement

an assignment of intellectual property rights be agreed as between the Authority, the Contractor and the other UK Government department listed as a party to such tri-partite agreement (the “Listed Government Department”) the

Contractor shall assign the agreed Intellectual Property into the Crown.

Virgin Timber

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

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Schedule 2 – Schedule of Requirements for Contract: 706216450**Part 1 – Schedule of Requirement****Table 1 - Contractor Deliverables**

Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code (full address is detailed in DEFFORM 96)	Packaging Requirements inc. PPQ and DofQ (as detailed in DEFFORM 96)	Delivery Date	Total Qty	Price (£) Ex VAT	
								Per Item	Total inc. Packaging (And Delivery if specified in Schedule 3 (Contract Data Sheet))
1	N/A	N/A	Hyperion Coherence Phase 1 28 Dec 22 – 31 Mar 23	N/A	N/A	March 2023	1	N/A	£857,700 T&S LoL £12,000
							Total Price		£869,700

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Schedule 2 – Schedule of Requirements for Contract: 706216450

Part 2 – Statement of Work



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Schedule 3 – Contract Data Sheet

General Conditions
Condition 2 – Duration of Contract: 3 months Contract Start Date: 28 December 2022 (TBC) Contract Expiry Date: 31 March 2023
Condition 4 – Governing Law: Contract to be governed and construed in accordance with: English Law <input checked="" type="checkbox"/> Scots Law <input type="checkbox"/> clause 4.d shall apply <i>(one must be chosen)</i> 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: [REDACTED] (as per Annex A to Schedule 3 (DEFFORM 111)) Project Manager: [REDACTED] (as per Annex A to Schedule 3 (DEFFORM 111))
Condition 19 - Notices: Notices served under the Contract shall be sent to the following address: Authority: Floorplate B2, Building 405, MOD Corsham, Westwells Road, Wiltshire SN13 9NR Contractor: 10 John Street, Stratford-Upon-Avon, Warwickshire, United Kingdom, CV37 6UB Notices can be sent by electronic mail: <input checked="" type="checkbox"/>
Condition 20a – Progress Meetings: The Contractor shall be required to attend the following meetings:

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Contract Start Up Meeting (within 20 days of Contract Award)
 Progress Meetings
 Final Deliverable Meeting
 Ad Hoc meetings

Condition 20b – Progress Reports:

The Contractor is required to submit the following Reports:

Weekly Progress Reports

Reports shall be Delivered to the following address: [REDACTED]

Supply of Contractor Deliverables**Condition 21 – Quality Assurance:**

Is a Deliverable Quality Plan required for this Contract? ☐ (Tick as appropriate)

If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within [REDACTED] 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: N/A

Condition 22 – Marking of Contractor Deliverables:

Special Marking Requirements:

Condition 24 – Supply of Data for Hazardous Contractor Deliverables, Material and Substances:

A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:

- a) The Authority's Representative (Commercial)
- b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.uk

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

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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? ☐ (Tick as appropriate)

Applicable to Line Items:

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

Applicable to Line Items:

Condition 28b – Delivery by the Contractor:

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

Special Delivery Instructions:

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

Condition 28c – Collection by the Authority:

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

Special Delivery Instructions:

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

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

Line Items: Address:

Line Items: Address:

Consignee details (in accordance with Condition 23):

Line Items: Address:

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Line Items:	Address:			
Condition 30 – Rejection The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:				
Condition 31 – Self-to-Self Delivery: Self-to-Self Delivery required? <input type="checkbox"/> (Tick as appropriate) If required, Delivery address applicable:				
Pricing and Payment				
Contract 35 – Contract Price: All Schedule 2 line items shall be FIRM Price other than those stated below: <table> <tr> <td>Line Items</td> <td>Clause 47.</td> <td>refers</td> </tr> </table>		Line Items	Clause 47.	refers
Line Items	Clause 47.	refers		
Termination				
Condition 43 – Termination for Convenience: The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:				
Other Addresses and Other Information (<i>forms and publications addresses and official use information</i>)				
See Annex A to Schedule 3 (DEFFORM 111)				

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Annex A to Schedule 3 (DEFFORM 111 (Edn 10/22))

DEFFORM 111

(Edn 10/22)

Appendix - Addresses and Other Information

1. Commercial Officer(s)

Name: [REDACTED]

Address: Floorplate B2, Building 405, MOD Corsham,
Westwells Road, Corsham, Wiltshire. SN13 9NR

Email: [REDACTED]

Name: [REDACTED]

Email: [REDACTED]

8. Public Accounting Authority1. 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: [REDACTED]

Address: Floorplate D1, Building 405, MOD Corsham,
Westwells Road, Corsham, Wiltshire. SN13 9NR

Email: [REDACTED]

9. Consignment Instructions

The items are to be consigned as follows:

3. Packaging Design Authority

Organisation & point of contact:

(Where no address is shown please contact the Project Team
in Box 2)**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 8JHAir Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight CentreIMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913
8946EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117
913 8946**B. JSCS**JSCS Helpdesk No. 01869 256052 (select option 2, then
option 3)

JSCS Fax No. 01869 256837

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

Branch/Name:

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(b) U.I.N.

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**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>

6. Intentionally Blank**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

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].

*** NOTE**

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

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

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

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Schedule 4 – Contract Change Control Procedure (i.a.w Clause 6d)**for Contract: 706216450****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 be outside the scope of the Coherence Services; and/or
 - c. 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
 - d. would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract; and
 - e. the Contractor notifies the Authority within ten (10) 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 5a, 5b, 5c and/or 5d providing written evidence for the Contractor’s reasoning on the matter; and
 - f. 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 5d) it is determined in accordance with Condition 41 (Dispute Resolution), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5a, 5b, 5c and/or 5d; and
 - (2) (where the Authority either agrees or it so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5a, 5b, 5c and/or 5d) 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 5a, 5b, 5c and/or 5d within ten (10) Business Days (or such longer period as shall have been agreed in writing by the Parties) after:

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- i) the date on which the Authority notifies in writing to the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5a, 5b, 5c and/or 5d; 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 Change(s) is/are a Change(s) falling within the scope of 5a, 5b, 5c and/or 5d 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; 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 5a, 5b, 5c and/or 5d in accordance with Clause 5 and:
 - (1) the Authority has agreed with the Contractor's conclusion so notified or it is determined under Condition 41 (Dispute Resolution) that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5a, 5b, 5c and/or 5d 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 5a, 5b, 5c and/or 5d) 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 41 (Dispute Resolution) that the relevant Change(s) is/are not a Change(s) falling within the scope of Clauses 5a, 5b, 5c and/or 5d, 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 of 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 Clauses 5a, 5b, 5c and/or 5d.
- 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 changes that are fairly and properly attributable to the Change(s).

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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 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 an amendment to the Contract in accordance with Condition 6 (Formal Amendment to the Contract), whereupon the Contractor shall promptly issue to the Authority the Contractor's DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Condition and implement the relevant Change(s) in accordance with such Proposal; or
 - b. serve Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such Notice of Change shall have no further effect).
12. If the Authority rejects the Contractor Change Proposal, it shall not be obliged to give its reasons for such rejection.
13. The Authority shall not be liable to the Contractor for the additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 11a, and then subject only to the terms of the Contractor Change Proposal so accepted.

Contractor Changes

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

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Schedule 5 – Contractor's Commercially Sensitive Information Form
(i.a.w. Condition 13) for Contract: 706216450

Contract No: 706216450

Description of Contractor's Commercially Sensitive Information:

- a. Cost Breakdown (not total costs).
- b. Information obtained from TSL and not generally available (e.g., future marketing strategy, product information, research plans etc).
- c. Information on sums recovered from TSL (but not the fact that sums have been recovered) such as damages, insurance claims and sums recovered under indemnities or warranties.
- d. Information on indemnities and caps on liabilities.

Cross Reference(s) to location of sensitive information:

Explanation of Sensitivity:

Details of potential harm resulting from disclosure:

Period of Confidence (if applicable):

Directly relating to points a-d of 'Description of Contractor's Commercially Sensitive Information'.

- a. Indefinitely (or until no longer sensitive)
- b. Three (3) years from the data obtained or until the information is in the public domain
- c. Three (3) years from the commencement date
- d. One (1) year from when the sums were due and payable
- e. Indefinitely

Contact Details for Transparency / Freedom of Information matters:

Name: [REDACTED]

Position:

Address: 10 John Street, Stratford-Upon-Avon, Warwickshire, CV37 6UB

Telephone Number:

Email Address: [REDACTED]

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**Schedule 6 – Hazardous Contractor Deliverables, Materials or Substances Supplied
under the Contract: Data Requirements for Contract: 706216450**

**Hazardous Contractor Deliverables, Materials or Substances Statement by the
Contractor**

Contract Number:

Contract Title:

Contractor:

Date of Contract:

* To the best of our knowledge there are no hazardous Contractor Deliverables, Materials or Substances to be supplied ☐

* To the best of our knowledge the hazards associated with Materials or Substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:) 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 Address:

Copy to be forwarded to :

Hazardous Stores Information System (HSIS)
Defence Safety Authority (DSA)
Movement Transport Safety Regulator (MTSR)
Hazel Building Level 1, #H019
MOD Abbeywood (North)
Bristol BS34 8QW

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Schedule 7 – Timber and Wood Derived Products Supplied under the Contract: Data Requirements for Contract: 706216450

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

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

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**Schedule 8 – Acceptance Procedure (i.a.w. Condition 29)
For Contract: 706216450**

- a. The Authority will notify the Contractor in writing within 10 working days following receipt of any Contractor Deliverable, if that Contractor Deliverable fails to meet the requirements set out in the Statement of Requirements and such Notice will state in reasonable detail the reasons for that Contractor Deliverable failing to meet such criteria.
- b. In the event of a Contractor Deliverable being unacceptable, the Contractor will at the Authority's option either rework such a Contractor Deliverable within ten (10) Business Days after the receipt of the Notice or present the Authority with a plan to rework such Contractor Deliverable within a period of time that is reasonable under the circumstances. In all events, such rework will be at no additional cost to the Authority.
- c. The Contractor shall supply the Contractor Deliverables to the satisfaction of the Authority based on conformity with the requirements set out in the Statement of Requirements and the terms of the Contract.
- d. Key Performance Indicators can be found at Annex A to Schedule 8 – Key Performance Indicators.

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**Annex A to Schedule 8
Key Performance Indicators**

1. This Schedule 8 – Annex A will detail the Key Performance Indicators that shall be placed on the contract and taskings.

KPI Description	Success Criteria
Deliver the Taskings by the need by date	Meeting the Deliverable MS Acceptance Criteria by the specified date stated in the TAF
Attend Progress Meetings	By due date
Attend Ad-hoc meetings	By due date
Submit weekly Progress Reports	By due date

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Schedule 9 – Security Aspects Letter (SAL)

Hyperion Coherence Phase



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Schedule 10 – Task Authorisation Form (TAF)



Task Authorisation
Form Blank .docx

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Schedule 11 – Tasking Rate Card

1. This Schedule 12 (Tasking Rate Card) shall be used for all Taskings placed onto the Contract following the process set out in Condition 47d (Task Authorisation Form) and Schedule 10 (Task Authorisation Form)



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