**SC2 (Edn 12/20)**



**International Guns, Missiles and Rockets Delivery Team**

**Contract No: 701550484**

**For: Supply and Repair of Dismountable Ballistic Protection**

|  |  |
| --- | --- |
| **Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland****Team Name and address:** **DES Wpns IGMR GS****MOD Abbey Wood,** **FIR 1A, Mail Point #4105,** **BRISTOL, BS34 8JH.****E-mail Address: Redacted – Data Protection Grounds****Telephone Number: 030 679 85831** | **And****Contractor Name and address:** **E-mail Address:****Telephone Number:** |

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# General Conditions

## **General**

* 1. The defined terms in the Contract shall be as set out in Schedule 1.
	2. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
	3. The Contractor warrants and represents, that:
		1. it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
		2. from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
		3. as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
		4. for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
	4. 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 Contractmay be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
		7. Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

## **Duration of Contract**

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

## **Entire Agreement**

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

## **Governing Law**

* 1. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
	2. Subject to clause 4.d and 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.
	3. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
	4. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
		1. Clause 4.a, 4.b and 4.c shall be amended to read:

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

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

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

* + 1. Clause 40.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

* 1. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
	2. Each Party agrees with each other Party that the provisions of this condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
	3. Where the Contractor’s place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

## **Precedence**

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

## **Amendments to Contract**

* 1. Except as provided in condition 31 all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority’s Representative (Commercial), and agreed by both Parties.
	2. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause 6.a above has been issued.

## **Variations to Specification**

* 1. The Authority’s Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority’s Notice, unless otherwise specified.

b. Any variations that cause a change to:

* + 1. fit, form, function or characteristics of the Contractor Deliverables;
		2. the cost;
		3. Delivery Dates;
		4. the period required for the production or completion; or
		5. other work caused by the alteration,

shall be the subject to condition 6 (Amendments to Contract). Each amendment under condition 6 shall be classed as a formal change.

## **Authority Representatives**

1. Any reference to the Authority in respect of:
2. the giving of consent;
3. the delivering of any Notices; or
4. the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this condition 8.

1. The Authority’s Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority’s Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
2. 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 (Amendments to Contract).

## **Severability**

* 1. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
		1. such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
		2. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

## **Waiver**

* 1. 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.
	2. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

## **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.

## **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.

## **Transparency**

* 1. Subject to clause 13.b 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.
	2. 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.
	3. 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 its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
	4. For the avoidance of doubt, nothing in this condition 13 shall affect the Contractor’s rights at law.

## **Disclosure of Information**

* 1. Subject to clauses 14.d, 14.e, 14.h and condition 13 each Party:
		1. shall treat in confidence all Information it receives from the other;
		2. shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
		3. shall not use any of that Information otherwise than for the purpose of the Contract; and
		4. shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
	2. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
		1. is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
		2. is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
	3. The Contractor shall ensure that its 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.
	4. Clauses 14.a and 14.b shall not apply to any Information to the extent that either Party:
		1. exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
		2. has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
		3. can show:
			1. 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;
			2. 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;
			3. 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
			4. 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.

* 1. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.
	2. The Authority may disclose the Information:
		1. on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
		2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
		3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
		4. on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;
		5. on a confidential basis for the purpose of the exercise of its rights under the Contract; or
		6. on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

* 1. Before sharing any Information in accordance with clause 14.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
	2. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the “Act”) or the Environmental Information Regulations 2004 (the “Regulations”). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
	3. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

## **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.

## **Change of Control of Contractor**

* 1. The Contractor shall notify the Representative of the Authority at the address given in clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Sub-contractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
	2. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section

Strategic Supplier Management Team

Spruce 3b # 1301

MOD Abbey Wood,

Bristol, BS34 8JH

**and** emailed to: DefComrclSSM-MergersandAcq@mod.gov.uk

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.

* 1. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.
	2. If the Authority exercises its right to terminate in accordance with clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 16.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority’s sole discretion.
	3. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority’s rights set out in this condition.

## **Environmental Requirements**

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

## **Contractor’s Records**

* 1. The Contractor and its sub-contractors 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.
	2. The Contractor and its sub-contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
		1. to enable the National Audit Office to carry out the Authority’s statutory audits and to examine and/or certify the Authority’s annual and interim report and accounts; and
		2. to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
	3. With regard to the records made available to the Authority under clause 1 of this Condition, and subject to the provisions of SC2 conditions of contract clause 14, 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.
	4. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
		1. the end of the Contract term;
		2. the termination of the Contract; or
		3. the final payment,

whichever occurs latest.

## **Notices**

1. 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.
2. Notices shall be deemed to have been received:
	1. if delivered by hand, on the day of delivery if it is the recipient’s Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
	2. if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
	3. if sent by facsimile or electronic means:
		1. 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
		2. 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.

## **Progress Monitoring, Meetings and Reports**

* 1. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor’s representatives are suitably qualified to attend such meetings.
	2. 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:
	3. performance/Delivery of the Contractor Deliverables;
	4. risks and opportunities;
	5. any other information specified in Schedule 3 (Contract Data Sheet); and
	6. any other information reasonably requested by the Authority.

# Supply of Contractor Deliverables

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

* 1. 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.
	2. 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 its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
	3. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
	4. The Contractor shall:
		1. observe, and ensure that the Contractor’s Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority’s premises;
		2. notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
		3. before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

## **Marking of Contractor Deliverables**

* 1. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
	2. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
	3. The marking shall include any serial numbers allocated to the Contractor Deliverable.
	4. 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)).

## **Packaging and Labelling (excluding Contractor Deliverables containing Munitions**

* 1. Packaging responsibilities are as follows:
		1. The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
		2. The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
		3. The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all subcontractors.
		4. Where the Contractor or any of their subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
	2. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:
		1. The Contractor shall provide Packaging which:
1. 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
2. is labelled to enable the contents to be identified without need to breach the package; and
3. is compliant with statutory requirements and this Condition.
	* 1. The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
4. reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
5. Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 23.i to 23.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
6. for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 23.i to 23.k.
	1. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
		1. The Health and Safety At Work Act 1974 (as amended);
		2. The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
		3. The REACH Regulations 2007 (as amended); and
		4. The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
	2. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
		1. The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
		2. The Air Navigation (Amendment) Order 2019.
	3. 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).
	4. The Contractor shall comply with the requirements for the design of MLP which include clauses 23.f and 23.g as follows:
		1. Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.
			1. The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCP-SptEng-Pkg

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCP-SptEng-PKg@mod.uk

* + - 1. The MPAS Documentation is also available on the DStan website.
		1. 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).
		2. 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’).
		3. New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
		4. Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
		5. 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.
		6. 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 23.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
		7. The documents supplied under clause 23.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.
	1. 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:
			1. On receipt of instructions received from the Authority’s representative nominated in Box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 23.f.
			2. Where the Contractor or their subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
	2. a list of all SPIS which have been prepared or revised against the Contract; and
	3. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
		+ 1. 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 23.g(1)(b).
		1. Where the Contractor or their subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
		2. Where the Contractor or their subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, he shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 23.g(1)(b).
		3. Where the Contractor or their subcontractor is not a PDA but is registered, he shall follow clauses 23.g(1)(a) and 23.g(1)(b).
	4. 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.
	5. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
		1. If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
1. 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.
2. Each consignment package shall be marked with details as follows:
3. name and address of consignor;
4. name and address of consignee (as stated in the Contract or order);
5. destination where it differs from the consignee's address, normally either:
	* 1. delivery destination / address; or
		2. 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;
6. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
7. If aggregated packages are used, their consignment marking and identification requirements are stated at clause 23.l.
	* 1. 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:
8. description of the Contractor Deliverable;
9. the full thirteen digit NATO Stock Number (NSN);
10. the PPQ;
11. maker's part / catalogue, serial and / or batch number, as appropriate;
12. the Contract and order number when applicable;
13. the words “Trade Package” in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
14. shelf life of item where applicable;
15. for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
16. any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
17. any additional markings specified in the Contract.
	1. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
		1. the full 13-digit NSN;
		2. denomination of quantity (D of Q);
		3. actual quantity (quantity in package);
		4. manufacturer's serial number and / or batch number, if one has been allocated; and
		5. the CP&F-generated unique order identifier.
	2. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet).
	3. 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:
18. class group number;
19. name and address of consignor;
20. name and address of consignee (as stated on the Contract or order);
21. destination if it differs from the consignee's address, normally either:
22. delivery destination / address; or
23. 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;
24. 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;
25. the CP&F-generated shipping label; and
26. any statutory hazard markings and any handling markings.
	1. 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 7 (Variations to Specification).
	2. 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).
	3. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
	4. 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).
	5. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
	6. 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.
	7. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
	8. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
	9. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

## **Supply of Data for Hazardous Materials or Substances in Contractor Deliverables**

* 1. The Contractor shall provide to the Authority:
1. for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and
2. for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

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

* 1. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:
1. 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 update the SDS and forward it to the Authority and to the address listed in clause 24.h below, and
2. 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.
	1. 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.
	2. 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).
	3. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of or the CLP Regulation 1272/2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
	4. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
3. activity;
4. the substance and form (including any isotope);
	1. 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.
	2. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor’s statutory duties under Clause 24.a, any information arising from the provisions of Clauses 24.e, 24.f and 24.g 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 MS WORD format, or, if only hardcopy is available, to the addresses below:
5. Hard copies to be sent to:

Hazardous Stores Information System (HSIS)

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

Spruce 2C, #1260,

MOD Abbey Wood (South)

Bristol BS34 8JH

1. Emails to be sent to:

 DESTECH-QSEPEnv-HSISMulti@mod.gov.uk Failure by the Contractor to comply with the requirements of this Condition 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 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

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

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

* 1. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:
		1. shall comply with the Contract Specification; and
		2. must originate either:
			1. from a Legal and Sustainable source; or
			2. from a FLEGT-licensed or equivalent source.
	2. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
		1. identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
		2. mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
		3. safeguarding the basic labour rights and health and safety of forest workers.
	3. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.
	4. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority’s inspection within fourteen (14) days of the Authority’s request.
	5. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.
	6. 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).
	7. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
		1. a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
		2. an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
	8. The Authority reserves the right to decide, except where in the Authority’s opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
		1. verify the forest source of the timber or wood; and
		2. assess whether the source meets the relevant criteria of clause 25.b.
	9. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with condition 6 (Amendments to Contract).
	10. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority’s Representative (Commercial).
	11. 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 (Amendments to Contract).
	12. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
		1. companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation’s UK Wood Packaging Material Marking Programme (more detailed information can be accessed at [www.forestry.gov.uk](http://www.forestry.gov.uk)) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
		2. sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, “Guidelines for Regulating Wood Packaging Material in International Trade”, Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [www.fao.org](http://www.fao.org)).

## **Certificate of Conformity**

* 1. 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.
	2. The Contractor shall consider the CofC to be a record in accordance with condition 18 (Contractor’s Records).
	3. 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. identification marks, batch and serial numbers in accordance with the Specification;
		10. quantities;
		11. 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.

* 1. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 26.c. 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).

## **Access to Contractor’s Premises**

* 1. The Contractor shall provide to the Authority’s Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor’s progress and quality standards in performing the Contract.
	2. 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.

## **Delivery / Collection**

* 1. 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.
	2. 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.
	3. 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 DEFFORM 111 at 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).
	4. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
		1. on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or
		2. on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

## **Acceptance**

* 1. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:
		1. the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor’s ownership; or
		2. the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.

## **Rejection and Counterfeit Materiel**

**Rejection:**

* 1. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this 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.
	2. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

**Counterfeit Materiel:**

* 1. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:
		1. notify the Contractor of its suspicion and reasons therefore;
		2. where reasonably possible, and if requested by the Contractor within 10 business days of such notification, (at the Contractor’s own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
		3. give the Contractor a further 20 business days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c.(2).(i) or the provision of a sample at 30.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
		4. determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel

Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a-30.b (Rejection).

* 1. In addition to its rights under 30.a and 30.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:
		1. retain any Counterfeit Materiel; and/or
		2. retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;

and such retention shall not constitute acceptance under condition 29 (Acceptance).

* 1. Where the Authority intends to exercise its rights under clause 30.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by the Authority, for:
		1. the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
		2. the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.
	2. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 30.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:
		1. to dispose of it responsible, and in a manner that does not permit its reintroduction into the supply chain or market;
		2. to pass it to a relevant investigatory or regulatory authority;
		3. to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or
		4. to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

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

* 1. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.f.(4) then the balance shall accrue to the Contractor.
	2. The Authority shall not use a retained Article or consignment other than as permitted in this condition 30.c – 30.j.
	3. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
	4. 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 this condition 30.c – 30.j except where it has been determined in accordance with condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 30.c.(4). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

## **Diversion Orders**

* 1. 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.
	2. 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.
	3. The Authority reserves the right to cancel the Diversion Order.
	4. 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.
	5. 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.
	6. 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 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

## **Self-to-Self Delivery**

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractorto its 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

## **Import and Export Licences**

* 1. 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.
	2. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
		1. ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
			1. the end user as: Her Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter “HM Government”); and
			2. 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".
	3. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
	4. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority’s representative.
	5. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
		1. the Contractor shall, or procure that the Contractor’s subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties’ organisations, to include their respective export licensing subject matter experts; and
		2. the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
	6. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
	7. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
	8. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
	9. 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.
	10. 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.
	11. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
		1. a non-UK export licence, authorisation or exemption; or
		2. any other related transfer or export control,

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

* 1. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
	2. If the information to be provided under Clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 33.l.
	3. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which it becomes or is aware that would affect the Authority’s ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
	4. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 33.l or 33.m of which it becomes aware that would affect the Authority’s ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
	5. Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are notified to the Contractor by that subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 10 Business Days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 10 Business 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.
	6. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with condition 6 or 7 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.
	7. In the event that the restrictions notified to the Authority pursuant to Clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 33.l, termination under Clause 33.t will be in accordance with condition 43 (Material Breach) and the provisions of clause 33.v will not apply.
	8. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
	9. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
	10. Where:
		1. restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 33.s or 33.t or both; or
		2. any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of condition 6 (Amendments to Contract) or condition 7 (Variations to Specification) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of condition 42 (Termination for Convenience) and as referenced in the Contract.

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

## **Third Party Intellectual Property – Rights and Restrictions**

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

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

* 1. If the Information required under clause 34.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.
	2. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This condition shall not apply if:
		1. the Authority has made or makes an admission of any sort relevant to such question;
		2. the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
		3. the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
		4. legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
	3. The indemnity in clause 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
	4. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
	5. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
	6. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
		1. if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
		2. in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
	7. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor’s costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
	8. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority’s costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
	9. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
		1. a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
		2. any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.
	10. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
		1. released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
		2. authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
	11. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
		1. infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
		2. misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
		3. provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
	12. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
		1. infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
		2. alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor’s use of that Information is for the purposes intended when it was disclosed by the Authority.
	13. The general authorisation and indemnity is:
		1. clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
		2. neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
		3. a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
		4. the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
		5. following a notification under clause 34.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
		6. the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
	14. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
	15. 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.
	16. 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

## **Contract Price**

* 1. 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).
	2. Subject to condition 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

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

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

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

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

d. Where the Authority fails to comply with clause 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 this 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.

## **Value Added Tax**

* 1. 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.
	2. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
	3. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its 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, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it 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.
	4. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
	5. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
	6. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor’s input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with condition 40 (Dispute Resolution).
	7. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this 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.

## **Debt Factoring**

* 1. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition 11 (Assignment of Contract), the Contractor may assign to a third Party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 (“the Act”)). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition 38 shall be subject to:
		1. reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f;
		2. all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
		3. the Authority receiving notification under both clauses 38.b and 38.c(2).
	2. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
	3. The Contractor shall ensure that the Assignee:
		1. is made aware of the Authority’s continuing rights under clauses 38.a(1) and 38.a(2); and
		2. notifies the Authority of the Assignee’s contact Information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a(1) and 38.a(2).
	4. 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.

## **Subcontracting and Prompt Payment**

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

# Termination

## **Dispute Resolution**

* 1. 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.
	2. In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
	3. 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.

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

 **Insolvency:**

* 1. 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 his or its 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 his 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 his debts if:
			1. he has 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 him; or
			2. execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
		7. the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
		8. the court making an award of sequestration in relation to the Contractor’s estates.

Where the Contractor is a company registered in England:

* + 1. 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
		2. the court making an administration order in relation to the company; or
		3. the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
		4. the company passing a resolution that the company shall be wound-up; or
		5. the court making an order that the company shall be wound-up; or
		6. the appointment of a Receiver or manager or administrative Receiver.

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

* 1. 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:**

* 1. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):
		1. offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
			1. 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
			2. 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 it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
	2. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
		1. to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
		2. to recover from the Contractor the amount or value of any such gift, consideration or commission; and
		3. to recover from the Contractor any other loss sustained in consequence of any breach of this condition, where the Contract has not been terminated.
	3. In exercising its rights or remedies under this condition, the Authority shall:
		1. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
		2. give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
			1. requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
			2. requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.
	4. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

## **Termination for Convenience**

* 1. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) business days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
	2. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
		1. not start work on any element of the Contractor Deliverables not yet started;
		2. complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
		3. as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
		4. terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b(2) and 42.b(3) of this condition.
	3. Where this condition applies (and subject always to the Contractor’s compliance with any direction given by the Authority under clause 42.b):
		1. The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
			1. in the possession of the Contractor at the date of termination; and
			2. provided by or supplied to the Contractor for the performance of the Contract,

except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

* + 1. 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:
			1. all such unused and undamaged materiel; and
			2. Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

* + 1. 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.
	1. The Authority shall (subject to clause 42.e below and to the Contractor’s compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
		1. the Contractor taking all reasonable steps to mitigate such loss; and
		2. the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
	2. The Authority’s total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
	3. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:
		1. the name of the Contractor shall be substituted for the Authority except in clause 42.c(1);
		2. the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) business days; and
		3. the Contractor’s right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this condition 42.
	4. Claims for payment under this condition shall be submitted in accordance with the Authority’s direction.

## **Material Breach**

* 1. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.
	2. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor’s material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
		1. carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
		2. obtaining the Contractor Deliverable in substitution from another supplier.

## **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

# The project specific DEFCONS and DEFCON SC variants that apply to this Contract are:

DEFCON 5J (Edn 18/11/16) - Unique Identifiers

DEFCON 014 (Edn. Jun 21) - Inventions and Designs Crown Rights and Ownership of Patents and

Registered Designs

DEFCON 117 (Edn Jul 21) - [Supply Of Information For NATO Codification and Defence Inventory Introduction](http://aof.uwh.diif.r.mil.uk/aofcontent/tactical/toolkit/downloads/defcons/pdf/117_0721.pdf)

DEFCON 532A (Edn Apr 21) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 649 Vesting (Edn Dec 16) Vesting

DEFCON 658 (Edn Sep 21) – Cyber (Very Low, RAR-447008685)

DEFCON 660 (Edn Dec 15) - Official-Sensitive Security Requirements

DEFCON 670 (Edn 11/17) – Tax Compliance

DEFFORM 177 (Edn 06/21) Design Rights And Patents (Sub-Contractors) Agreement

# The special conditions that apply to this Contract are:

The IPR Schedule 11 shall apply to this Contract.

The Limit of Contractor’s Liability Schedule 12 shall apply to this Contract.

# The Express Warranty Clause that apply to this Contract is set out below:

**Clause 47**

**Express Warranty**

47.1. The Parts and Labour Warranty shall guarantee each Article or Part against failure under the terms stated below, for 12 (twelve) months. The period of Warranty for each Article or Part shall commence from the date on which the Article or Part is issued from Naval Stores to the End User or 12 (twelve) months after receipt of delivery of the Article or Part to Naval Stores, whichever is the sooner.

47.2. This Warranty is given to the Authority or its authorised representative, hereinafter referred to as the Authority. The Warranty provides full parts and labour coverage for design, workmanship or material failure of any part of the Article or Part supplied as original equipment.

47.3. The Contractor warrants that the Articles supplied against the Contract including all components supplied thereon by the Contractor as original equipment will:

a. Be free from defect in design, materials and workmanship under normal use and service; and

b. Conform in all respects to the Key User Requirements in accordance with Contract 701550484 Schedule 2 Appendix 1 to Annex A – Key User Requirements.

47.4 The Contractor's obligations under this Warranty being limited to repairing or replacing any component or assembly, which proves to be defective. The Warranty provides full parts and labour cover against failure of any part of the Article or Part supplied as original equipment.

**Exclusions**

47.5. This Warranty shall not apply in respect of damage caused by:

a. Any use or maintenance of the Article or Part not in accordance with the instructions, drawings or documentation provided by the Contractor;

b. Any use or maintenance of the Article or Part outside of the Authority’s terms of use or performed by non-authorised personnel;

c. War and peacekeeping operations resulting in battle damage;

d. Operating the Article or Part beyond its authorised load;

e. Misuse or neglect; and

f. Any alterations, modifications or attachments made to the Article or Part without the Contractor's approval.

47.6. The Contractor shall not be liable under this Warranty to carry out:

a. Normal maintenance services or adjustments; or

b. Repairs to remedy fair wear and tear.

**Applicable Countries**

47.7. The Parts and Labour Warranty applies worldwide.

**Warranty Repairs**

47.8. If any Article or Part provided by the Contractor in accordance with this Contract does not comply with clause 47.3. above, the Authority shall present the Article or Part to the Contractor for warranty work accompanied by a standard MOD Warranty Claim Form, fully completed and correctly authorised.

47.9. Details on the warranty form shall include model code, Contract number, length and type of warranty, supply date, issue date, and original serial number (when existing) of the part. The Warranty Claim Form shall be submitted to the Contractor within 90 (ninety) days after date of recorded failure.

47.10. Upon receipt of an Article or Part for warranty work and a Warranty Claim Form, the Authority may, without prejudice to the Authority’s other rights and remedies, reject the Article or Part and require the Contractor to:

a. to repair the Article or Part at no cost to the Authority; or

b. to replace the Article or Part at no cost to the Authority.

47.11. The Contractor shall complete warranty work within 10 (ten) working days of receipt of the Article, or 4 (four) working days in priority cases, provided the Authority has supplied the Contractor with the relevant MOD Warranty Claim Form information to enable the defect investigation in each case.

47.12. Following repair or replacement of the Article, the Contractor shall:

a. arrange delivery of the repaired or replacement Article or Part to a UK location of the Authority’s choosing; and

b. be responsible for all freight costs, parts and consumables incurred in the process of replacing or repairing the Article or Part in accordance with clause 47.10.

47.13. Any Article or Part replaced by the Contractor under this Warranty, shall be guaranteed for the remaining warranty time, or 12 (twelve) months, whichever is the greater.

47.14. The Contractor shall have ten (10) working days from the date the Authority first notified it that an Article or Part does not comply with clause 47.3 to raise a formal dispute in accordance with the Warranty Claim Process shown at Table 1 below.

47.15. The Contractor is obliged to deliver a repaired or replacement Article or Part in accordance with Clause 47.10 and Clause 47.12 even if a formal dispute is raised in accordance with the Warranty Claim Process. In the event that the Contractor’s dispute is upheld, the Authority agrees to reimburse the Contractor the full amount of costs incurred in arranging repair or a replacement and delivery of the Article or Part under Clause 47.12 and Clause 47.14. The Authority shall have no other liability to the Contractor for any additional costs it may incur under this clause.

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| --- |
| **Table 1** |
| ***Dismountable Ballistic Protection System Warranty Claim Process*** |
| ***Stage*** | ***Responsible Party*** | ***Activity*** | ***Response Period*** |
| *1* | *Authority*  | *Authority informed of defect*  | *\*Contractor informed in writing by the Authority’s agreed representative as per DEFFORM 111 to Contract that an Article or Part does not comply with clause 3.* |
| *2* | *Contractor*  | *Acknowledge Warranty claim (email)* | *The Contractor has one (1) working day to acknowledge receipt of the Authority’s Warranty Claim.* |
| *3* | *Contractor*  | *Deliver repaired or replacement Article or Part to a UK location of the Authority’s choosing.*  | *Within ten (10) working days of Stage 1, or 4 (four) working days in priority cases.* |
| *4* | *Contractor*  | *Issue formal dispute to the Authority’s agreed representative at DEFFORM 111 (if applicable).* | *Within ten (10) working days of Stage 1.* |
| *5* | *Authority* | *Acknowledge dispute (email)* | *The Authority has one (1) working day to acknowledge receipt of the Contractor’s formal dispute.* |
| *6* | *Authority*  | *Resolution/arbitration process in accordance with (if required) Clause 40 (Dispute Resolution).* | *Within three (3) calendar months of Stage 4.*  |

*\* To be supported by a defect report and photographic evidence where appropriate.*

47.16. If required by the Authority, the Contractor shall submit a quarterly return to the Authority, which shall include details of all warranty claims, including items cleared with relevant completion date and items still outstanding with predicted completion date. Statistics reflecting work completed within and outside target times shall also be included.

47.17. Any Warranty defect identified by the Authority in material or workmanship must be communicated to the Contractor within 90 (ninety) days after date of recorded failure. During operational deployment reasonable endeavors will be made by the Authority to communicate warranty information within 90 (ninety) days of the recorded failure.

47.18. This Warranty shall be entirely without prejudice to the Authority's rights and remedies under the Contract or otherwise, including (but not limiting) rights and remedies relating to terms and conditions implied by law and those under Clause 43 (Material Breach).

# Schedules

# Schedule 1 - Definitions of Contract

**Articles** means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (**This definition only applies when DEFCONs are added to these Conditions**);

**Authority** means the Secretary of State for Defence acting on behalf of the Crown;

**Authority’sRepresentative(s)**shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority’s Representative(s) in connection with the Contract. Where the term “Authority’s Representative(s)” in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority’s Representative(s) shall be the designated person(s) for the purposes of condition 8;

**Business Day** means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

**Central Government Body** a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

1. Government Department;
2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
3. Non-Ministerial Department; or
4. Executive Agency;

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

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

**Conditions** means the terms and conditions set out in this document;

**Consignee** means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverablesare 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 (Amendments to Contract);

**Contract Price** means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor,for the full and proper performance by the Contractor of its obligations under the Contract.

**Contractor** means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;

**Contractor Commercially** means the Information listed in the completed Schedule 5

**Sensitive Information** (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** means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

1. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
2. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

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;

**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:

1. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);
2. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
3. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
4. International Maritime Dangerous Goods (IMDG) Code;
5. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;
6. 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](http://www.dstan.mod.uk);

**Deliver** means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;

**DeliveryDate** means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;

**Denomination of Quantity** means the quantity or measure by which an item of material is

**(D of Q)** managed;

**Design Right(s)** has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

**Diversion Order** means the Authority’s written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);

**EffectiveDate of Contract** means the date specified on the Authority’s acceptance letter;

**Evidence** means either:

a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or

b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;

**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** is a generic term for any MOD asset such as equipment,

**Assets (GFA)** information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;

**Hazardous Contractor** means a Contractor Deliverable or a component of a Contractor

**Deliverable** Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

**Independent Verification** means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to “ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;

**Information** means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;

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

**Legal and Sustainable** means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;

**Legislation** means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

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

**Military Packager** is a MOD sponsored scheme to certify military Packaging

**Approval Scheme (MPAS)** designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);

**Military Packaging Level (MPL)** shall have the meaning described in Def Stan 81-041 (Part 1);

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

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

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

**Notices** shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

**Overseas** shall mean non UK or foreign;

**Packaging** Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;

 Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;

**Packaging Design Authority** shall mean the organisation that is responsible for the original

**(PDA)** 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

**(PPQ)** 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;

**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, referred to in Schedule 2 (Schedule of Requirements);

**STANAG4329** means the publication NATO Standard Bar Code Symbologies which can be sourced at [https://www.dstan.mod.uk/faqs.html](http://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** means timber (including Recycled Timber and Virgin Timber but

**Products** 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;

**TransparencyInformation** 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;

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

#

# Schedule 2 - Schedule of Requirements for Contract No: 701550484

For Supply and Repair of Dismountable Ballistic Protection

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Item Number** | **MOD Stock Reference No.** | **Part No. (where applicable)** | **Specification** | **Consignee Address Code** (full address is detailed in DEFFORM 96) | **Required Delivery Date** | **Total Qty** | **Price (£) Ex VAT** |
| **Per Item** | **Total inc. Packaging****(and Delivery if specified in Schedule 3 (Contract Data Sheet)**  |
| 1 |  |  | Provision of Prototype Dismountable Protection System | PO | T0 + 30 Business Days | 1 |       |       |
| 2 |  |  | Dismountable Protection Systems (Initial Order) | PO | T0 + 90 Calendar Days | 25 |       |       |
| 2a |  |  | Provision of Additional Dismountable Protection Systems in accordance with Schedule 9 | PO | On Demand |  |  |
| 3 |  |  | Provision of Ship’s Staff Repair Kits in accordance with Schedule 9 | PO | On Demand |  |  |
| 4 |  |  | Provision of Manufacturing Data Packs | IGMR DTSee DEFFORM 111 | T0 + 120 Business Days |       |       |       |
|  |  |  |  |  | **Total Price** |       |

## **Schedule 2 Annex A – Statement of Work**

**DESIGN AND MANUFACTURE OF DISMOUNTABLE BALLISTIC PROTECTION FOR ROYAL NAVY SURFACE SHIPS.**

**INTRODUCTION**

1. This Statement of Work (SoW) defines and describes the work to be carried out under the DES Wpns IGMR Gunnery Systems Dismountable Ballistic Protection (DBP) contract (701550484).
2. The scope of this SoW covers DBP systems, parts and support services provided for Royal Navy (RN) surface ships, Royal Fleet Auxiliary (RFA) and Naval Supported Shipping (NSS).
3. **BACKGROUND**
4. By the nature of current operational tasking,a significant proportion of a Warship’s time is spent patrolling areas of dense shipping or transiting choke points or into and out of harbour. During these periods, the Ship is restricted in its freedom of manoeuvre and is within the range of Fast Inshore Attack Craft (FIAC), skiffs, waterborne IED’s and suicide attacks from small craft and UAV’s. Lack of freedom to manoeuvre, Rules of Engagement (RoE) and the need to minimise collateral damage to nearby civilian vessels dictates that these threats will be primarily engaged by manned Close Range Gunnery systems such as Mk 44 Minigun, GPMG and HMG at very short notice and potentially only after being engaged by the threat.
5. In order to ensure full arcs of fire around the platform, some positions are necessarily very exposed with no cover from the ship’s superstructure e.g. on the forecastle or flight deck, and so there is a requirement to provide ballistic protection to removable Force Protection positions on all maritime units operating in threat environments. The protection must provide front and side ballistic protection to STANAG 4569 Level 1, from deck level to a height of at least one metre, and not interfere with the established arcs of fire of the weapon.

**REQUIREMENT**

1. To provide front and side ballistic protection at small calibre gun positions such as M323 Minigun(including Mini Gun ammunition box), GPMG and 50 Cal Heavy Machine Gun from deck level to a height of at least one metre and one metre either side of the mount in accordance with STANAG 4569.
2. The protection shall allow the aimer to continue to wear OSPREY/VIRTUS body armour.
3. To be made of non-ferrous material to reduce effect on magnetic signature, Radar Cross-Section and maintenance routine.
4. To not interfere with the established arcs of fire of the weapon.
5. To be marinised and weather-proofed and to be capable of being used across the worldwide operational environment down to, and including, C2 in accordance with DEFSTAN 00-035 Part 4 Issue 05 – “Environmental Handbook for Defence Materiel - Natural Environments”.

**ACTIVITIES**

1. Upon contract award, the contractor will undertake the following activities:
	1. **Design of DBP.** The contractor shall design the DBP to the standards defined in the key user requirements (KUR) document:
		1. In addition to the requirements detailed in the KUR document, the DBP shall incorporate reinforced/protective corners to prevent excessive damage through wear and tear and prevent loss of integrity of the DBP.
		2. The design of the DBP must be compatible with existing stowages/spare barrel holders and ammunition stowages already fitted to RN Ships.
		3. Production of DBP**.** The contractor shall produce all DBP in accordance with the statement of work.
	2. Upon Contract award the company must provide a prototype DBP system within 30 business days to be sent to HMNB Portsmouth to ensure fit and form[[1]](#footnote-2).
	3. **Initial Order.** An initial order of 25 systems is to be delivered within 90 calendar days of contract placement. The Authority is prepared to accept delivery in minimum batches of 5 systems at a time. The initial 25 systems must incorporate any modifications found necessary as a result of the assessment of the Prototype System at 11(b) above.
	4. **Additional orders**. The additional orders shall be delivered within 90 calendar days or less from time of order, in accordance with lead times listed in Schedule 9. The contractor is to provide a pricing structure for the following order quantities: 1-5; 6-10; 11-15; 16-20; 21-25; and >25 sets of DBP. It is anticipated that up to 25 systems per annum will be ordered after the initial contract placement.
	5. **Development.** The contractor must be willing to make reasonable adjustments and alterations to the design of their DBP (a) as a result of the initial assessment of the Prototype System, and (b) at any point throughout the duration of the contract, based on feedback from the end user.
	6. **Technical Support.** For the duration of the Contract, the contractor shall investigate all Defect Reports relating to DBP raised using a Form S2022 or by other defect reporting method. The Contractor shall respond with a Technical Instruction, Form S2022A, providing the appropriate advice and action to be taken to overcome the shortcoming identified. The provision of this service is considered to be the Contractor’s obligation at no additional cost to the Authority.
	7. **Production of manufacturing data packs.** The contractor shall produce and supply the following manufacturing data packs and technical information Pack in accordance with UK DID MDP (Edn 2/98):
		1. Detailed description and mechanical characteristics;
		2. Manufacturing drawings;
		3. Certificate of Conformity (CoC);
		4. Certificate of Design (CoD);
		5. Bill of Materials (BoM);
		6. Material Safety Data Sheets (MSDS);
		7. Technical Data Sheets (TDS);
		8. STANAG L1 Compliance Certificate and Report;
		9. Installation guidance, training and maintenance requirements and top-level drawings for inclusion in the illustrated parts catalogue;
		10. Fire retardant statement, if held by Contractor; and
		11. Modelling characteristics data for shock and vibration, if held by Contractor.
	8. These manufacturing packs will be delivered within 120 business days of contract award.

* 1. The contractor shall update and re-issue the manufacturing technical data packs as necessary throughout the duration of the Contract and propose amendments to technical documentation arising from approved modifications, relevant S2022s and S2022As and any other identified errors or omissions.
	2. **Codification of DBP.** The contractor shall provide Technical Data for the DBP to the Codification Authority in accordance with DEFCON 117 so that it can be delivered with a NATO Stock Number (NSN) in accordance with DEFSTAN 05-099 Part 1 Issue 01 – “Managing Government Furnished Equipment in Industry”.
	3. **Delivery.** The Contractor shall deliver theDBP to HMNB Portsmouth Stores in accordance with DEFCON 621B Edn 10/04.
	4. **Ship's Staff Repair Kits.** DBP panels are subject to wear and tear and the contractor is required to provide a simple touch-up repair kit, able to repair a panel surface area of up to 60x60mm. Contractor shall provide prices repair kits in accordance with Schedule 9 and provide prices and lead times for the following order quantities: 1-5; 6-10; 11-15; 16-20; 21-25; and >25.
	5. **Repairs** **by the Contractor**. The contractor may also be required to carry out more significant repairs on a case by case basis. The Authority shall return damaged items to the contractor. The contractor shall survey the items and establish the extent of any repair necessary and provide a report to the Authority together with quotation for the repair and survey costs. In the event that the Authority decides to proceed with the repair, the Authority will issue an offer of contract amendment to reflect the additional scope and provide a corresponding Purchase Order number. In the event that the Authority decides not to proceed with the repair, the Authority shall instruct the Contractor regarding the disposal of the item and raise a contract amendment and provide a corresponding Purchase Order number to cover the cost of the survey and disposal (if applicable).
	6. Repair kit instructions shall be provided IAW DEFSTAN 02-040 - *Requirements for the Preparation of Technical Publications, Part 1 - System and Equipment Publications.*
	7. **Meetings.** The Authority reserves the right to call an Ad-Hoc meeting, at any time during the duration of the contract at no additional cost to the Authority, which will be held at the Ministry of Defence, MOD Abbey Wood, the Contractor’s premises or virtually. The Contractor and the Authority shall provide suitable representation at the meetings.

## **Schedule 2 – Appendix 1 to Annex A – Key User Requirements (KURs)**

**Key User Requirements – Dismountable Ballistic Protection**

|  |  |  |  |
| --- | --- | --- | --- |
| **KUR No** | **Requirement Descriptor** | **Performance** | **Remarks** |
| 1 | To provide front and side ballistic protection at Small Calibre Gun Mountings (including Mini Gun ammunition box) from deck level to a height of at least one metre and one metre either side of the mount **(Threshold)** | Currently upper-deck weapon crews manning GPMG, Mini Gun and HMG are provided with OSPREY/VIRTUS Personal Protective Equipment (PPE). While this protects their upper body, it leaves them exposed to retaliatory fire especially from vessels that are lower in the water than the aimer – such as Dhows, skiffs, fast inshore attack craft (FIAC) and other small craft.STANAG 4569 has been used in the KUR’s because it has verifiable, testable level of protection.Each class of ship will require a number of different sizes and shapes corresponding to the amount of space available for the capability at each mount point. | In accordance with STANAG 4569 Level 1. |
| 2 | The protection shall allow the aimer to continue to wear OSPREY/VIRTUS PT **(Threshold)** |  |
| 3 | To be made of non-ferrous material to reduce effect on magnetic signature, RCS and maintenance routine **(Threshold)** for all units. |  |
| 4 | Not to interfere with the established arcs of fire of the weapon **(Threshold)** | In particular angle of depression not to be reduced. |
| 5 | To be marinised and weather proofed so as to be capable of being used across the worldwide operational environment, down to and including C2 – **(Threshold**). | As defined in DEF STAN 00-35 part 4 Issue 5 |

## **Schedule 2 - Appendix 2 to Annex A– Supply of Supply of Manufacturing Data Packs**

Supply of Manufacturing Data Packs in accordance with SOW Activity 11(g) and (h).

Delivery Required T0 (Contract Start Date + 120 Business Days **)**

# Schedule 3 – Contract Data Sheet

|  |
| --- |
| **General Conditions** |
| **Condition 2 – Duration of Contract:**The Contract expiry date shall be: Contract Start date (T0) plus 60 Months |
| **Condition 4 – Governing Law:**Contract to be governed and construed in accordance with:  English Law [x]  Scots Law [ ]  clause 4.d shall apply *(one must be chosen)*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 – Data Protection Grounds *(as per DEFFORM 111)*Project Manager: Redacted – Data Protection Grounds *(as per DEFFORM 111)* |
| **Condition 19 – Notices:**Notices served under the Contract shall be sent to the following address:Authority: Redacted – Data Protection Grounds (*as per DEFFORM 111)* Contractor: TBA  Notices can be sent by electronic mail? YES  |
| **Condition 20.a – Progress Meetings:**The Contractor shall be required to attend the following meetings:As defined in SOW Activity 11(o) |
| **Condition 20.b – Progress Reports:**The Contractor is required to submit the following Reports:N/AReports shall be Delivered to the following address:N/A |

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| **Supply of Contractor Deliverables** |
| **Condition 21 – Quality Assurance:**Is a Deliverable Quality Plan required for this Contract? Not ApplicableIf required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within N/A Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.**Other Quality Assurance Requirements:*** AQAP 2110 Edition D Version 1 NATO Quality Assurance Requirements for Design, Development
* and Production. Certificate of Conformity shall be provided in accordance with Condition 26- Certificate of Conformity Edition 12/16.
* No deliverable Quality Plan is required reference Condition 21 - Supply of Contractor Deliverables and Quality Assurance
* Records held by the contractor shall be managed in accordance with Condition 18 – Contractor’s Records
* Requirements for the Configuration Management (CM) of defence materiel shall be in accordance with DEF Stan 05-57 Configuration Management of Defence Materiel Issue 7
* Concessions shall be managed in accordance with DEF Stan 05-61 Quality Assurance Procedural Requirements Part 1: Concessions Issue 6
* Contractor working parties shall be managed in accordance with DEF Stan 05-61 Quality Assurance Procedural Requirements Part 4: Contractor Working Parties Issue 3
* Avoidance of counterfeit materiel shall be managed in accordance with DEF Stan 05-135 Avoidance of Counterfeit Materiel Issue 1
* Where GQA is to be performed against this contract will be in accordance with AQAP 2070 Edition B Version 4 NATO Mutual Government Quality Assurance (GQA) Process.
* NATO DefStan 05-099 for Management of GFX in Industry
 |
| **Condition 22 – Marking of Contractor Deliverables:**Special Marking requirements: N/A |
| **Condition 24 - Supply of Data for Hazardous Contractor Deliverables, Materials 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.ukto be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable. To note: not applicable for Item 1 of Schedule of Requirements (prototype). |
| **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 no later than one (1) month prior to the Delivery Date for the Contract Deliverable. To note: not applicable for Item 1 of Schedule of Requirements (prototype).  |
| **Condition 26 – Certificate of Conformity:**Is a Certificate of Conformity required for this Contract? Yes Applicable to - DBP Systems If required, does the Contractor Deliverables require traceability throughout the supply chain? NoApplicable to Line Items: N/A |
| **Condition 28.b – Delivery by the Contractor:**The following Line Items are to be Delivered by the Contractor:Items 1, 2, 3 Special Delivery Instructions:As stated in the Statement of RequirementsEach consignment is to be accompanied by a DEFFORM 129J. |
| **Condition 28.c - Collection by the Authority:**The following Line Items are to be Collected by the Authority:N/ASpecial Delivery Instructions: N/AEach consignment is to be accompanied by a DEFFORM 129J.Consignor details (in accordance with 28.c.(4)):Line Items:       Address:      Line Items:       Address:      Consignee details (in accordance with condition 23):Line Items: 1, 2 & 3 Address: Inward Shippers, Portsmouth Freight Centre, 123 store, Circular Road, HM Naval Base, Portsmouth, Hants, PO1 3LU(Tel:  02392 722796 (Team Leader))Line Items: 5 Address: IGMR DT, Fir 1A, MoD Abbey Wood, Bristol, BS34 8JH FAO. Redacted – Data Protection Grounds |
| **Condition 30 – Rejection:**The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:The time limit for rejection shall be 30 Calendar Days. |
| **Condition 32 – Self-to-Self Delivery:**Self-to-Self Delivery required? No If required, Delivery address applicable:N/A |

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| **Pricing and Payment** |
| **Condition 35 – Contract Price:**All Schedule 2 (SOR) line items shall be FIRM Price other than those stated below:Line Items       Clause 46.       refers |

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| **Termination** |
| **Condition 42 – Termination for Convenience**:The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:The Notice period for termination shall be 20 Business Days |

|  |
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| **Other Addresses and Other Information** *(forms and publications addresses and official use information)* |
| See Annex A to Schedule 3 (DEFFORM 111) |

## **Schedule 3 Annex A - Deform 111**

|  |
| --- |
| **Schedule 3** DEFFORM 111**Annex A** (Edn 03/21)Appendix - Addresses and Other Information |
|  | **1. Commercial Officer**Name: Redacted – Data Protection GroundsAddress: IGMR DT, Fir 1A, MoD Abbey Wood, Bristol, BS34 8JHEmail: Redacted – Data Protection Grounds |  | **8. Public Accounting Authority**1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street,  Manchester, M1 2WD 🕿 44 (0) 161 233 53972. 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 – Data Protection GroundsAddress IGMR DT, Fir 1A, MoD Abbey Wood, Bristol, BS34 8JHEmail: Redacted – Data Protection Grounds |  | **9. Consignment Instructions**The items are to be consigned as follows:      |  |
|  |
|  | * + - 1. **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 8JH Air Freight CentreIMPORTS 🕿 030 679 81113 / 81114 Fax 0117 913 8943EXPORTS 🕿 030 679 81113 / 81114 Fax 0117 913 8943Surface Freight CentreIMPORTS 🕿 030 679 81129 / 81133 / 81138 Fax 0117 913 8946EXPORTS ( 030 679 81129 / 81133 / 81138 Fax 0117 913 8946 |  |
|  |  |
|  | **4. (a) Supply / Support Management Branch or Order Manager:****Branch/Name:** Redacted – Data Protection GroundsAddress: IGMR DT, Fir 1A, MoD Abbey Wood, Bristol, BS34 8JHEmail: Redacted – Data Protection Grounds**Tel No:** **(b) U.I.N.** |  | **B.** **JSCS**JSCS Helpdesk No. 01869 256052 (select option 2, then option 3) JSCS Fax No. 01869 256837Users requiring an account to use the MOD Freight Collection Service should contact DESWATERGUARD-ICS-Support@mod.gov.uk in the first instance. |  |
|  |
|  | **5. Drawings/Specifications are available from**DEFFORM 47 Annex D Appendix 1 to Annex D - Ballistic Armour Stowage Drawings - Not included on Military Technical Information GroundsNote: Separate Zip File Appendix 2 to Annex D – DBP Stowage Images - Not included on Military Technical Information Grounds |  | **11. The Invoice Paying Authority** Ministry of Defence 🕿 0151-242-2000DBS FinanceWalker House, Exchange Flags Fax: 0151-242-2809Liverpool, L2 3YL **Website is:** <https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing> |  |
|  |
|  | **6. INTENTIONALLY BLANK** |  | **12. Forms and Documentation are available through \*:**Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C SiteLower ArncottBicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)**Applications via fax or email:** DESLCSLS-OpsFormsandPubs@mod.uk |  |
|  |
|  | 1. **Quality Assurance Representative:**

Redacted – Data Protection Grounds 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.aof.mod.uk/aofcontent/tactical/toolkit/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. |  |
|  |

# Schedule 4 - Contract Change Control Procedure (i.a.w. clause 6.b) for Contract No: 701550484

**1. Authority Changes**

Subject always to Condition 6 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a " Change") in accordance with this Schedule 4.

**2. Notice of Change**

a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clause 3 below.

**3. Contractor Change Proposal**

a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

b. The Contractor Change Proposal shall include:

* + - * 1. the effect of the Change on the Contractor’s obligations under the Contract;
				2. a detailed breakdown of any costs which result from the Change;
				3. the programme for implementing the Change;
				4. any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
				5. such other information as the Authority may reasonably require.

c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

**4. Contractor Change Proposal – Process and Implementation**

1. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
	1. evaluate the Contractor Change Proposal;
	2. where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
		* 1. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
				1. indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Amendments to Contract); or
				2. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.
			2. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.
			3. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b.(1) above.

**5. Contractor Changes**

If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 3b above, and the process at Clause 4 above shall apply.

# Schedule 5 - Contractor’s Commercially Sensitive Information Form (i.a.w. condition 13) for Contract No: 701550484

|  |
| --- |
| Contract No:        |
| Description of Contractor’s Commercially Sensitive Information:       |
| Cross Reference(s) to location of sensitive information:       |
| Explanation of Sensitivity:       |
| Details of potential harm resulting from disclosure:       |
| Period of Confidence (if applicable):       |
| Contact Details for Transparency / Freedom of Information matters:Name:      Position:      Address:      Telephone Number:      Email Address:       |

# Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements for Contract No: 701550484

**Hazardous Contractor Deliverables, Materials or Substances**

**Statement by the Contractor**

Contract No:

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 Abbey Wood (North)

Bristol BS34 8QW

# Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract: Data Requirements for Contract No: 701550484

The following information is provided in respect of condition 25 (Timber and Wood-Derived 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 No: 701550484

Not Used

# Schedule 9 – Price List for additional purchases

To be populated as part of Tender Return

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Description** | **NATO Stock No**  | **Part Number** | **Qty Price Breaks** | **Lead times** | **FIRM Price each (£) (Ex-VAT)** |
| **Year 1 (FY\* 22/23)** | **Year 2(FY 23/24)** | **Year 3(FY 24/25)** | **Year 4(FY 25/26)** | **Year 5(FY 26/27)** |
| Dismountable Ballistic Protection system (SOR Item 2) |  |  | 01 - 05 |  |  |  |  |  |  |
| 06 - 10 |  |  |  |  |  |  |
| 11 - 15 |  |  |  |  |  |  |
| 16 - 20 |  |  |  |  |  |  |
| 21 - 25 |  |  |  |  |  |  |
| > 25 |  |  |  |  |  |  |
|  |
| Ship's Staff Repair Kits(SOR Item 4) |  |  | 01 - 05 |  |  |  |  |  |  |
| 06 - 10 |  |  |  |  |  |  |
| 11 - 15 |  |  |  |  |  |  |
| 16 - 20 |  |  |  |  |  |  |
| 21 - 25 |  |  |  |  |  |  |
| > 25 |  |  |  |  |  |  |

To note: \*Financial year is defined as 1 April to 31 March

# Schedule 10 – Security Aspect Letter

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|  | Defence Equipment & SupportIGMRFIR 1A #4105MOD Abbey WoodBristol BS34 8JH |
|  | 8-Nov-21 Our Reference: 701550484 |  |
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**Dismountable Ballistic Protection (DBP) 5 Year Spares Contract**

**SECURITY ASPECTS LETTER**

1. I hereby give you notice that the classified aspects relating to the above Contract proposal, which are entrusted to you in confidence are as follows:-

|  |  |
| --- | --- |
| **UK CLASSIFICATION** | **ASPECTS** |
| SECRET UK EYES ONLY | 1. N/A |
| SECRET  | 1. N/A |
| OFFICIAL SENSITIVE | 1. T23 Stowage Drawings
2. T45 Stowage Drawings
3. DBP Statement of Work (SOW)
4. DBP Key User Requirement (KUR)
5. BRd 9437 Pedestal Mk 15 and Dismountable Ballistic Shields
 |
| OFFICIAL SENSITIVE – COMMERCIAL | 1. RFQ 7015504842. Contract 701550484 |

1. Any access to classified information on MoD premises that may be needed will be subject to MoD security regulations under the direction of the MoD Project Manager.
2. This SAL has been developed based on the Security Classification Guide Ref IGW/19/11/01 issue H. This is a UK Official Sensitive document and can be made available if required from the MoD project manager.
3. You are requested to acknowledge receipt of this letter confirming that:-
4. The definition of classified matter is understood and has been brought to the attention of the person directly responsible for the security of the project.
5. Measures can, and will, be taken to safeguard the classified matter as set out above and in the tender documents.
6. If information or aspects of the equipment have been previously classified by a foreign government, this information or aspects of the equipment will be classified at a level which will accord at least the same degree of protection as provided by the foreign government classification.
7. Any difficulties experienced in interpreting and implementing the above should be reported immediately to me.

Yours faithfully

Redacted – Data Protection Grounds

DES Wpns-IGMR-MCG-FCS

# Schedule 11 – IPR

**IPR SCHEDULE**

1. **DEFINITIONS**

“COTS Item” means a Commercially-available Off-The-Shelf that is freely available on the open market to any entity and is supplied with sufficient technical data to enable it to be installed, operated and replaced without reference to the Contractor or any sub-contractor.

1. **DEFCONs**
	1. The following DEFCONs shall apply:

DEFCON 14 (Edn 06/21)

1. **Technical Data Condition V5.7**
	1. Annex A to this Schedule (Technical Data Condition V5.7) shall apply to any and all Technical Data, which is a Contractor Deliverable.
2. **COTS ITEMS**
	1. Where the Contractor has permission from the Authority to include in the Contract Deliverables a COTS Item, the Contractor shall develop a datapack containing fit, form and function information for all such COTS Items and information detailing their integration within the Contract Deliverables. Such datapacks shall, as a minimum, contain information on all interfaces (including any proprietary messaging formats) used within the system to a level of detail sufficient to enable the Authority or a third party acting on behalf of the Authority to operate and maintain the system, and to upgrade the system by replacement of an existing capability or insertion of a new capability into the system. The Authority shall have Government Licence Rights under Clause 3.1 (Technical Data Condition V5.7) of this Schedule in datapacks provided for in Clause 4.1 of this schedule.
3. **SUB-CONTRACTORS**
	1. The Contractor shall not place any sub-contract or order, involving the design or development of articles or software required under the Contract, without the prior approval of the Authority.
	2. The Contractor shall not enter into any commitment with a Sub-contractor involved in the design and development of articles or software required under the Contract until the Sub-contractor has entered into an agreement with the Authority in the form of a DEFFORM 177. The request for approval shall be accompanied by 2 copies of the agreement signed by the Sub-contractor. If the Contractor is unable to comply with this Clause 7.2, he shall report the matter to the Authority and await further instructions before placing the sub-contract or order.
	3. The Contractor shall incorporate into any sub-contract or order appropriately amended versions of the Contract Deliverables (the ‘Sub-contractor Deliverables) insofar as they are applicable to the sub-contract work.
	4. The Contractor shall be responsible for ensuring that the Sub-contractor Deliverables are incorporated in any DEFFORM 177 required under this Contract.
4. **AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**
	1. 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, 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.

## **Schedule 11 – Annex A Technical Data Condition 5.7**

**RIGHTS IN TECHNICAL DATA**

1. Definitions

1.1 “Technical Data” means information of a scientific, or technical or programme/project management nature which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information communicated solely by oral communications and excluding computer software that is subject to other licensing arrangements as agreed with the Authority.

1.2 “Article” includes part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.

1.3 “Commercially-available Off-The-Shelf Item”, or “COTS Item” means an item that is freely available on the open market to any entity and is supplied with sufficient Technical Data to enable it to be installed, operated and replaced without reference to the Contractor or any sub-contractor.

1.4 “Interface Data” means Technical Data that describes the overall physical, functional and performance characteristics (for example, “form, fit and function” information) of an Article that is a Contractor Deliverable and is sufficient to enable physical and functional interchangeability, or replacement with interchangeable items, or to enable the Article to interoperate with other items, components or processes.

1.5 “Intellectual Property Rights” or “IPR” means all patents, utility models, or rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database rights; semiconductor chip topography rights; rights in confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.

1.6 “HMG” means Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland.

1.7 “Government Licence Rights” means rights to copy, use, modify, reproduce, or disclose Technical Data in whole or in part, and to authorise third parties to do so, in any manner, and for any UK Governmental Purpose; but, for the avoidance of doubt, such purposes shall not extend to commercial sales of Articles except for the disposal of outworn or surplus items, nor to licensing of Contractor-owned IPR for revenue generation.

1.8 “Government Licence Rights Technical Data” means Technical Data in which the Authority has Government Licence Rights.

1.9 “Limited Rights” means rights to copy, use, modify or disclose Technical Data, in whole or in part, only within HMG for any UK Governmental Purpose or as otherwise agreed with the Contractor.

1.10 “Limited Rights Technical Data” means Technical Data in which the Authority has Limited Rights.

1.11 “UK Governmental Purposes” means anything done by or for HMG under the authority of a Minister of the Crown.

1.12 “Background Patents and Designs” means patents or registered designs granted in respect of any patent or registered design applications made before the date of issue of the Authority’s first written invitation to tender (“ITT”) for the Contract and any such applications made after that date in respect of inventions or designs first reduced to writing by the inventor(s) or designer(s) before that date.

2. Ownership of IPR

2.1 Subject to any existing rights of the Authority or any third party, the ownership of IPR in Technical Data and any other IPR generated by the Contractor in the course of work under the Contract shall, as between the Authority and the Contractor, belong to the Contractor.

3. Rights in Technical Data

3.1 Government Licence Rights

3.1.1 The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Government Licence Rights licence for all Technical Data, which is a Contractor Deliverable, or has otherwise been delivered to the Authority as part of the work carried out under the Contract, and has been generated under the Contract.

3.1.2 Notwithstanding the provisions of clause 3.1.1 or any other provisions of this condition, the Authority shall have Government Licence Rights in the following Technical Data delivered or deliverable under the Contract:

3.1.2.(a) Interface Data (other than Interface Data for which the Crown is the owner of the IPR, or otherwise licensed, by virtue of another provision of the Contract);

3.1.2 (b) corrections or minor amendments made to Technical Data supplied to the Contractor as Government Furnished Assets;

3.1.2(c) Technical Data in which the Authority has obtained Government Licence Rights under another contract;

3.1.2(d) Technical Data that has been made publicly available otherwise than in breach of obligations of confidence, or Technical Data that the Contractor has disclosed without restrictions on further use or disclosure; and

3.1.2(e) any Technical Data specifically identified in the Schedule of Requirements as deliverable to the Authority with Government Licence Rights.

3.1.3 The Authority shall have Government Licence Rights of use in the following Technical Data, including any Limited Rights Technical Data included in or associated with it, notwithstanding the provisions of clause 3.2:

3.1.3.(a) studies, analyses, test data or similar data generated for the Contract, or for a response by the Contractor to an invitation to tender for the Contract, when the study, analysis, test or similar work is a Contractor Deliverable, but excluding test methodology to the extent that it consists of Limited Rights Technical Data;

3.1.3.(b) Technical Data in data packs which are Contractor Deliverables; and

3.1.3.(c) Technical Data for installation, operation, routine maintenance or training purposes;

but the Government Licence Rights granted to the Authority under clause 3.1.3 shall not apply to any Technical Data in self-standing proprietary designs, processes and materials that forms any part of the Technical Data that is a Contractor Deliverable and is notified to the Authority as Limited Rights Technical Data in accordance with the provisions of clause 4.1 of this condition.

3.2 Limited Rights

3.2.1 The Authority shall have royalty-free, worldwide, non-exclusive, perpetual and irrevocable Limited Rights in all Technical Data that is or forms part of a Contractor Deliverable, or has been otherwise been delivered to the Authority, and which has not been generated under the Contract, and which has been notified to the Authority in accordance with the provisions of clause 4.1.

3.2.2 The Authority shall retain any rights that it has obtained in Technical Data by virtue of the provisions of another contract or other arrangement.

3.2.3 Except as may be required or permitted by law or as otherwise permitted by the provisions of another contract or other arrangement, the Authority shall not disclose Limited Rights Technical Data outside HMG unless it has obtained the prior written permission of the Contractor or as permitted by the provisions of clause 3.3.

3.3 Specific Disclosure Rights of the Authority in Limited Rights Technical Data

3.3.1 Notwithstanding any restrictions on disclosure in clause 3.2, the Authority shall be permitted to disclose, and authorise the use of, Technical Data with Limited Rights for UK Governmental Purposes:

3.3.1(a) to an independent support contractor, solely for the purposes of the provision of a service to the Authority which, unless otherwise stated in the Contract, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract; and

3.3.1(b) where the Contract is for the supply of Services and the Limited Rights Technical Data concerns the processes and procedures concerned with the delivery of the Services, to a follow-on contractor only for the continued supply of the Services following termination or expiry of the Contract, or during any transitional period as may be specified in the Contract, and only to the extent necessary for the delivery of the follow-on Services; and

3.3.1(c) where the Technical Data is necessary for repair, maintenance or overhaul of equipment for urgent operational or safety reasons, subject to the recipient (i) agreeing that the Technical Data shall only be used, or copied for those purposes, and (ii) agreeing to return the Technical Data to the Authority immediately on completion of the urgent operational or safety need without retaining a copy.

3.3.2 The Authority will have the right to disclose Limited Rights Technical Data for information and evaluation purposes in confidence to a foreign government for UK Governmental Purposes only and with the prior written permission of the Contractor

3.3.3 The Authority shall not disclose Technical Data properly marked under clause 5 as being Limited Rights Data unless it has first provided the Contractor, or other party asserting Limited Rights, with the opportunity to enter into a direct confidentiality agreement in the form of DEFFORM 94 with the intended recipient. The Authority shall not be restricted from disclosing the Technical Data to the intended recipient if the Contractor or other party asserting Limited Rights has not signed a confidentiality agreement in the form of DEFFORM 94 within 30 (thirty) calendar days of its receipt provided that the Authority has placed the intended recipient under an obligation to keep the Technical Data confidential and to use it only for the purposes for which it is disclosed.

3.4 Modifications

3.4.1 The Authority shall not exercise its rights in Government Licence Rights Technical Data to authorise a third party (other than the design rights owner) to modify the design of any Article produced under the Contract without ensuring that (i) it has the right to provide to the Contractor a copy of all Technical Data relating to any modified design to enable the Contractor to manufacture articles to the modified design (“Modified Design Data”);and (ii) that it has the right to grant to, or to procure the grant to, the Contractor of a licence on willing licensor/willing licensee terms, to use the Modified Design Data for the purposes of manufacture, sales and support of items made to the modified design for customers other than the Authority.

3.5 Contractor Background Patents and Designs and other IPR

3.5.1 Subject to clause 3.5.2 and to any restrictions notified to the Authority in accordance with clause 4.1, the Government Licence Rights granted to the Authority under clauses 3.1.1, 3.1.2, and 3.1.3 and Limited Rights granted under clause 3.2 of this condition shall include licences under any Background Patents or Designs and other IPR owned by the Contractor solely in connection with, and to the extent necessary to exercise its rights in the Technical Data in accordance with such clauses.

3.5.2 Subject to the rights of the Crown arising otherwise than under this condition, and provided that the Contractor has met in a timely manner any obligations included in the Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any Background Patents or Designs owned or controlled by the Contractor and used by the Authority, or any third party authorised by the Authority, in the exercise of the rights granted to the Authority under clause 3 of this condition. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Government Licence Rights Technical Data that is a Contractor Deliverable, and is subject to this condition.

3.6 Authority’s Quiet Enjoyment; and Embedded Software

3.6.1 Nothing in this condition shall act to prevent the Authority’s quiet enjoyment of any Articles delivered to it under the Contract, including the right to operate, maintain, use and dispose of the Articles, and the Contractor shall not act to enforce rights in relation to any software that is provided as an integral part of such Articles to prevent the Authority’s quiet enjoyment of the Articles. Nothing in this condition shall prevent the Authority from exercising its statutory rights, currently in force or hereinafter enacted, in respect of such software. This clause 3.6 shall not require the Contractor to deliver software to the Authority separate from the Article. No trade mark right or right against passing off shall be exercised against any deliverable Article, or any article made by or for the Authority in accordance with the rights granted under this condition, to a design incorporating a trade mark, recorded in deliverable Technical Data or embodied within any deliverable model, die or mould.

3.7 COTS Items

3.7.1 Where the Contractor has, consistent with its obligations under the Contract, utilised one of its own COTS Items, or a COTS Item supplied by a third party, in its Contractor Deliverables, the Contractor shall not be required to grant, or procure the grant of, licence rights in any Technical Data relating to the COTS item to the Authority in accordance with this clause 3, provided that the Contractor notifies the Authority of the source of the COTS Item (including Original Manufacturer Part Numbers, NATO Stock Numbers or NCAGE Codes, as appropriate). The Contractor shall secure for the Authority any standard licence rights that the supplier of the COTS Item provides in relation to Technical Data concerning the COTS Item.

4. Restrictions on Authority’s Use and Disclosure of Technical Data – Prior Identification by the Contractor

4.1 All Technical Data to be delivered to the Authority under the Contract with restrictions on use or disclosure that are more restrictive than Government Licence Rights, shall be identified in an intellectual property rights restrictions form appended to the Contract (the “ IPR Restrictions Form”).The IPR Restrictions Form may be updated from time to time during the course of the Contract with the express written agreement of the Authority.

4.2 The Contractor shall not deliver to the Authority any Technical Data with any restrictive marking if that Technical Data is not identified in the IPR Restrictions Form. Subject to clause 4.3, any Technical Data delivered to the Authority without first being identified in the IPR Restrictions Form may be used by the Authority as if it is Government Licence Rights Technical Data, in accordance with the provisions of clause 3.1.1, but subject to the provisions of clauses 3.4 and 3.5.

4.3 The Contractor shall notify the Authority of restrictions on the use or disclosure of Technical Data, due to IPR owned by a third party other than a subcontractor, after its delivery to the Authority where the identification of any such restrictions is based on information not available to the Contractor at the date of delivery, or where the Technical Data is identified in the IPR Restrictions Form and the omission of any restrictive marking is inadvertent. The Authority shall give prompt and reasonable consideration to any such notification and shall allow the Contractor to apply the appropriate restrictive marking to the Technical Data retrospectively if it is clear, in the circumstances, that the restrictive marking correctly reflects the Authority’s rights in the relevant Technical Data as detailed in clause 3 of this condition. The Authority may continue any use of the Technical Data begun prior to the notification made in accordance with this clause 4.3 notwithstanding that any such use may be contrary to any restrictive marking retrospectively applied to the Technical Data, but shall otherwise observe all restrictions on use and disclosure notified by the Contractor as are agreed in accordance with this sub-clause 4. 3..

5. Marking of Technical Data

5.1 The Contractor shall mark any covering, packaging or cover page of Technical Data delivered to the Authority with Government Licence Rights with the following legend:

***“This Technical Data is delivered to the Authority by [state Contractor’s name] under Contract [state MOD Contract No.]. The Authority has Government Licence Rights in the Technical Data in accordance with the provisions of 5.1 of the Technical Data clause.”***

5.2 The Contractor shall mark any covering, packaging or cover page of Technical Data delivered with Limited Rights with the following legend:

***“This Technical Data is delivered to the Authority by [state Contractor’s name] under Contract [state MOD Contract No.]. The Authority has Limited Rights in the Technical Data as marked in accordance with the provisions of 5.2 of the Technical Data clause.”***

5.3 Any pages of documents including Technical Data subject to Limited Rights shall include the legend in clause 5.2 at the top or bottom of the page and shall be clearly marked by the Contractor to identify the portions of those pages that are subject to those rights. The Technical Data shall be identified by marking, underlining or shading. The Authority shall have the right to remove any Technical Data subject to Limited Rights from a document and copy, use or disclose the edited document in accordance with the rights of the Authority in the resultant document.

5.4 The Contractor may apply a copyright notice to any Technical Data delivered to the Authority to identify the owner of the copyright, but shall not mark the Technical Data with any description of the Authority’s rights in it other than those set out in this clause 5.

6. Effect and Removal of Nonconforming and Incorrect Markings

6.1 The Authority shall notify the Contractor in writing of any markings on Technical Data that it reasonably believes are incorrect or do not conform to the provisions of clause 5. The Contractor shall remove or correct any incorrect or non-conforming markings within 30 (thirty) calendar days of notification. Failure to remove or correct any such markings may be a ground for non-acceptance of the Technical Data by the Authority and withholding of Contract payment until resolved.

6.2 If the Contractor fails to remove or correct a non-conforming marking within 30 (thirty) calendar days after receipt of notification by the Authority, then the Authority shall be entitled to ignore the marking and treat the Technical Data as Government Licence Rights Technical Data in accordance with clause 3 of this condition and, if the Authority considers it appropriate, remove or correct the marking.

7. Technical Data Provided By Subcontractors

7.1 The Contractor shall ensure that the Authority’s rights in Technical Data which is to be supplied by the Contractor’s subcontractors, and which will be included in Technical Data that is a Contractor Deliverable, shall be in accordance with the provisions of clause 3 together with any other rights of the Authority as set out in this condition. The Contractor shall be responsible for determining with the subcontractor prior to the award of any subcontract the appropriate contractual arrangements, as between the Contractor and subcontractor, to provide the required Authority user rights in such Technical Data.

7.2 If the Contractor becomes aware that it will be unable to meet its clause 7.1 obligations to the Authority in respect of Technical Data that will be delivered by a potential subcontractor to the Authority (regardless of whether that delivery is directly from the potential subcontractor to the Authority or through the Contractor to the Authority), then the Contractor shall promptly notify the Authority, providing evidence that the Contractor has used all reasonable endeavours to secure the necessary rights for the Authority, and that the subcontractor is unwilling to provide the necessary rights to the Authority, and request the potential subcontractor to negotiate directly with the Authority regarding the Authority’s user rights in Technical Data arising from a potential subcontract. Upon receipt of such notice the Authority shall use all reasonable endeavours to conclude any direct agreement promptly. The Contractor shall not enter into a subcontract with the potential subcontractor in respect of the relevant Contract requirement of the Authority unless and until the Authority notifies the Contractor that the potential subcontractor has entered into a direct agreement with the Authority to provide the necessary rights for the Authority in Technical Data to be delivered by the subcontractor.

7.3 If the Contractor enters into a subcontract with a subcontractor that fails to secure the rights for the Authority as required by the provisions of clause 7.1, and has not received prior written authorisation from the Authority to place the subcontract in accordance with the provisions of clause 7.2, the Authority shall be entitled, to the extent allowed by law and without prejudice to any other contractual remedy, to use any of the subcontractor’s Technical Data delivered to the Authority as if the Contractor had secured rights for the Authority and obligations from the subcontractor consistent with the nature of the Technical Data and the relevant provisions of clause 3; and the Contractor shall indemnify the Authority and be liable for any damages or costs incurred by the Authority for so long as the Contractor fails to secure the rights as aforesaid.

8. Contractor Retention of Records

8.1 The Contractor shall retain, for the duration of the Contract and for a period of six years thereafter, or such alternative period as may be specified in the Schedule of Requirements, a record of the work performed under the Contract and of the results obtained, and the Technical Data generated, delivered or to be delivered to the Authority under the Contract.

8.2 The Authority shall have the right to inspect the records maintained by the Contractor in accordance with clause 8.1, within the period specified in that clause and on reasonable notice. The Authority shall further have the right during that period or for so long as the Technical Data is known to still exist, to require additional deliveries of any Technical Data that was generated in the performance of work under the Contract whether or not it is contained in the Contractor Deliverables This right shall be exercisable by separate order and on agreement of a fair and reasonable price based solely on the costs of compiling and delivering the Technical Data. Technical Data required to be delivered under this clause 8.2 shall be delivered within 45 (forty-five) calendar days of receipt by the Contractor of any order from the Authority and shall only be used by the Authority (or on its behalf) in accordance with the rights granted in such Technical Data under this condition.

8.3 At the written request made by the Authority within the period specified in clause 8.1 and subject to the availability of the relevant expertise, the Contractor shall provide to the Authority, or to any other person to whom the Authority may provide Technical Data in accordance with its rights under clause 3, assistance in understanding the Technical Data. The assistance shall be limited to that required by a person competent in the relevant area of technology to interpret the results of the Contract. The assistance shall be made available within 60 (sixty) calendar days of the request and on fair and reasonable terms and conditions, including the costs of providing the assistance, but excluding any payment in respect of the right to use the Technical Data.

8.4 The Contractor shall maintain one copy of all Technical Data that is a Contractor Deliverable (hereinafter called the “Control Copy”). The Control Copy shall be the property of the Authority, and shall be marked accordingly, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and copies of any Technical Data from the Control Copy shall be supplied as required from time to time by the Authority at the Authority’s expense, the cost of which shall be based solely on the cost of copying and delivering the Control Copy.

9. Liability

9.1 In the event that Technical Data to which this Condition applies is used by or for the Authority otherwise than for the purpose for which it was supplied in accordance with the relevant provisions of this Contract, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

10. General

10.1 For the avoidance of doubt, nothing in this condition shall:

10.1.1 restrict the entitlement of either party to make use of Technical Data once it enters the public domain otherwise than as a result of the Authority or any person supplied with the Technical Data by the Authority disclosing it in breach of any obligations of confidence relating to such Technical Data; or

10.1.2 extinguish or diminish any statutory rights or common law rights of the Authority to use any Technical Data or any IPR covering such Technical Data or any rights of the Authority acquired under any separate contract or agreement.

10.2 The terms of this condition shall survive the termination or expiry of the Contract.

11. Commercial Exploitation Levy

11.1 The Contractor shall not sell any Articles developed under the Contract, otherwise than for the purposes of the United Kingdom Government, or grant any licence to manufacture such Articles or any materials or processes the design or development of which was called for in the Schedule of Requirements of the Contract without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Contractor in respect of such sale or grant having regard, among other things, to the amounts paid or payable to the Contractor by the Authority under the Contract.

## **Schedule 11 - Appendix 1- IPR Form**

**­­Ministry of Defence**

**NOTIFICATIONS OF INTELLECTUAL PROPERTY RIGHTS (IPR) RESTRICTIONS**

**PART A – Notification of IPR Restrictions**

|  |  |
| --- | --- |
| ITT / Contract Number |  |
| ID #  | Unique Technical Data Reference Number / Label | Unique Article(s) Identification Number / Label | Supportive Statement for IPRE Restriction | Ownership of the Intellectual Property Rights |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
| 5 |  |  |  |  |
| 6 |  |  |  |  |
| 7 |  |  |  |  |
| 8 |  |  |  |  |

## **Schedule 11 - Appendix 2- Guidance Notes**

**Guidance and Background to NOTIFICATIONS OF INTELLECTUAL PROPERTY RIGHTS (IPR) RESTRICTIONS**

**This FORM MUST be completed for all procurements.**

**The populated Form must be appended to any resulting contract.**

It may be updated through the contract amendment process and by explicit agreement of the senior commercial officer.

1. **Purpose**

Part A of this FORM shall be the contractual record of any key technologies that are proposed to be incorporated within or as part of a Contract Article to be acquired by the MOD, and, where potential contractors / agents of the MOD have invested their own finance to develop such technologies and MOD might not expect the broadest commercial freedoms. This part of the form shall also serve to notify the Authority of any third-party interests such as copyright, design rights, patents, or trademarks which may impinge upon any MOD expected IPR freedoms.

Part B of this FORM is to provide the Authority with a product reference picture to give context to any restrictions recorded within Part A and to show where proprietary articles are to be included within the proposed product and to identify where MOD funding is being applied.

1. **Content – PART A**

If any information / technical data that is deliverable (or delivered) under the relevant contract conditions, is / will be / or is likely to be, subject to any IPR restrictions (or any other type of restriction which may include Export restrictions) of the Authority’s ability to use or disclose the information / technical data in accordance with the conditions of any resulting contract then you must identify this information / technical data in this Part A, otherwise the Authority shall treat such information with the broadest scope of its rights under any resulting contract:

For example, any of the following should be disclosed:

1. any restriction on the provision of information / technical data to the Authority; any restriction on disclosure or the use of information by the Authority; any obligations to make payments in respect of IPR, and any patent or registered design (or application for either) or other IPR (including unregistered design right) owned or controlled by you or a third party;
2. any allegation made against you, whether by claim or otherwise, of an infringement of IPR (whether a patent, registered design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of the contract or subsequent use by or for the Authority of any Contractor Deliverables;
3. the nature of any allegation referred to under sub-paragraph (b) above, including any request or obligation to make payments in respect of the IPR of any confidential information and / or;
4. any action you need to take, or the Authority is requested to take, to deal with the consequences of any allegation referred to under sub-paragraph (b) above.
5. **Form Population – Part A**

Block 1. Enter the associated ITT or contract number as appropriate.

Block 2. No action – This sequential numbering is to assist isolation and discussion of any line item.

Block 3. Identify a unique reference number for the information / technical data i.e. a contractor’s document reference number including any dates and version numbers.

Block 4. Identify the Article(s) associated with the information / technical data by entering a unique identification number / label for the Article(s). This may range from platform level down to sub-system level. This is to enable the Authority to quickly identify the approximate technical boundary to any user rights limitation e.g. The RADAR or Defensive Aid Sub-System etc. This identification shall be at the lowest level of replaceability of the Article(s) or part of it to which the restrictions apply i.e. if the restrictions apply to a sub-system the parent system should not be used to identify the restriction boundary. (Any entry without a unique identifier shall be treated as a nil entry)

 NOTE: The Authority does not accept any IPR restrictions in respect of the physical Articles themselves. Block 4 is solely to provide an applied picture to any technical data stated under Block 3 as having IPRE restrictions.

Block 5. This is a freeform narrative field to allow a short explanation justifying why this information / technical data has limited rights applying to it.

Block 6. Identify who is the owner of the IPR in the information / technical data i.e. copyright, design right etc. If it is a sub-contractor or supplier, please identify this also.

1. **Content – PART B**

Where hardware or software is proposed to be delivered as part of the Contractor Deliverables then; you must include a planned, System / Product Breakdown Structure (PBS) (The PBS shall be in a format which is consistent with ISO 21511 and/or the configuration requirements of DEFSTAN 05-057 or other suitable format as agreed with the Authority.) or, for software, a modular breakdown structure shall be provided. For reasons of clarity, it is acceptable to provide several levels of breakdown if this assists in organising the configuration of the Articles. An example structure is provided below.

Details provided under Part B shall not imply any restriction of use over the Contract Articles nor does it imply any restriction on associated Technical Data to be delivered under the contract. Any restrictions of such Technical Data must be identified within Part A.

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

1. **Form Population – Part B**

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

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

When identifying any item as either a), b) or c) above, the Contractor shall further identify for each of those items, whether that item has, or will have, foreign export control applying to it, through use of the further following category.

1. (FEX) Foreign Export Controlled

Note:

1. During the term of the contract the Contractor may transition any items identified as category (d) above into category (b) or (c) or into category (a) by express written agreement and following the amendment process set out in the Contract.
2. It is acceptable to specify the highest level of structure to which the category (a), (b) or (c) applies i.e. there is no need to specify each sub-system / componentry if the entirety of the parent system was for example, Private Venture Funded. See guidance examples overleaf.
3. For the avoidance of doubt, where a parent system did not exist prior to the contract yet makes use of Private Venture Funded Articles, it must be identified as (CAF). The Private Venture Funded sub-components / sub-systems can be identified as PVF.

**Example PBS**

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

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

1. The proposed new aircraft would be considered contract authority funded at its top level. (CAF)
2. Items denoted as private venture funded (PVF) would generally indicate that it and all of its sub-components have been funded by sources other than HMG. In this instance there is no need to proceed down the product breakdown structure any further (see 1.4), except unusually where a generally PVF regarded item has incorporated a PAF item (see 2.21).
3. The proposed design is making use of a previous authority funded engine (PAF).
4. This engine has foreign export control applying to items within it. (FEX)
5. The Defensive Aids System at 2.1 is covered as part of the contract but the exact configuration and design has not yet been fixed “Design Not Mature” (DNM). This serves to indicate areas of a products configuration where uncertainty remains in terms of the Authority’s expected freedom of action (FoA) e.g. (IPR, Export etc) but also serves to highlight areas of technical risk and scope for time and cost variation within a proposed product.

It is not feasible for a parent PVF system to make use of a CAF item; the parent system configuration would not have existed prior to this contract.

# Schedule 12 - The Limit of Contractor’s Liability

**1. LIMITATIONS ON LIABILITY**

**Definitions**

In this Condition [1] the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

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

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

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

ii) the Data Protection Act 2018;

iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy [and the guidance and codes of practice issued by the Information Commissioner’s Office which apply to a party];

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

“Law” means any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

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

“Term” means the period commencing on the date of which this Contract is signed (T0) and ending on the expiry date of T0 + 60 months or on earlier termination of this Contract.

**Unlimited liabilities**

Neither Party limits its liability for:

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

1.2.2 fraud or fraudulent misrepresentation by it or its employees;

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

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

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

1.3.1 for any indemnity given by the Contractor to the Authority under this Contact, including but not limited to Condition 33 and Condition 41 above.

1.3.2 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and Condition 33 (Third Party IP – Rights and Restrictions);

1.3.3 the Contractor's indemnity in relation to TUPE at Schedule [ (TUPE)];

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

The financial caps on the Authority's liability set out in Clause 1.6 below shall not apply to the following:

1.4.1 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to Condition 33 and condition 41 above.

1.4.2 the indemnity given by the Authority in relation to TUPE under Schedule [ (TUPE)] shall be unlimited; and

**Financial limits**

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

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

**in respect of condition 28, £680K in aggregate;**

**in respect of condition 43, £2M pounds in aggregate;**

1.5.2 without limiting Clause 1.5.1 and subject always to Clauses 1.2, 1.3, 1.3.5 and 1.5.3, the Contractor's total liability throughout the Term in respect of all other liabilities arising under warranty, under statute or otherwise under or in connection with this Contract shall **be £680K in aggregate**.

1.5.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 1.5.1 and 1.5.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 1.5.1 and 1.5.2 of this Contract.

1.6 Subject to Clauses 1.2, 1.4, 1.4.3 and 1.7, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

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

**Consequential loss**

Subject to Clauses 1.2, 1.3 and 1.9, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

1.8.1 indirect loss or damage;

1.8.2 special loss or damage;

1.8.3 consequential loss or damage;

1.8.4 loss of profits (whether direct or indirect);

1.8.5 loss of turnover (whether direct or indirect);

1.8.6 loss of business opportunities (whether direct or indirect); or

1.8.7 damage to goodwill (whether direct or indirect),

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

The provisions of Clause 1.8 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

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

to any third party;

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

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

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

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

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

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

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

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

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

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

**Invalidity**

If any limitation or provision contained or expressly referred to in this Condition [1] is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition [1].

**Third party claims or losses**

Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and Condition 33 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

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

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

**No double recovery**

Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

1. The purpose of this sample is to test fit and form against the required space envelope, and therefore the sample system is not required to be fully functional. [↑](#footnote-ref-2)