



Ministry of Defence

Dismounted Close Combat (DCC) Contract No: 706392450 For: Procurement of Assault Rifle in-Line Low Light Sight (ARILLS) 2

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

And

Team Name and address:

Dismounted Close Combat Team,
Land Equipment Operating Centre
Soldier Training & Special Projects
Cedar 2B #4110
MOD Abbey Wood
Bristol.
BS34 8JH.

E-mail Address:

**Redacted under FOIA Section 40 –
Personal Information**

Telephone Number:

Contractor Name and address:

Qioptiq Ltd
Glascoed Road, Saint Asaph
Denbighshire
LL17 0LL

E-mail Address:

**Redacted under FOIA Section 40 –
Personal Information**

Telephone Number:

Redacted under FOIA Section 40 –
Personal Information

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GENERAL CONDITIONS

1. GENERAL

- a. The defined terms in the Contract shall be as set out in **Schedule 1**.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
 - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their obligations under, the Contract;
 - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their obligations under the Contract;
 - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
 - (4) for so long as the Contract remains in force they shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
 - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state, or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced, or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act, or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or its nominated deputy) authorised in **Schedule 3 (Contract Data Sheet)** to take or do that decision, act, or thing on behalf of the Authority.
 - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

2. DURATION OF CONTRACT

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

3. ENTIRE AGREEMENT

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

4. GOVERNING LAW

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and **Condition 40 (Dispute Resolution)** and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this **Condition 4** and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply, then the following amendments shall apply to the Contract:
 - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
 - a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
 - b. Subject to **Condition 40 (Dispute Resolution)** and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
 - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this **Condition 4** and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
 - (2) Clause 40.b shall be amended to read: "In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration, and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in **Schedule 1(Definitions of Contract)** to the Arbitration (Scotland) Act 2010."
- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract

does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge, or encumbrance upon any of its properties or other assets.

- f. Each Party agrees with each other Party that the provisions of this **Condition 4** shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in **Schedule 3 (Contract Data Sheet)** as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

5. PRECEDENCE

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

6. FORMAL AMENDMENTS TO THE CONTRACT

- a. Except as provided in **Condition 31 (Diversion Orders)** and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
 - (1) the Authority Notice of Change under **Schedule 4 (Contract Change Control Procedure)** (where used); and
 - (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the **DEFFORM 10B (Acceptance Of Offer Of Amendment To Contract)** duly signed by the Contractor.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such **DEFFORM 10B (Acceptance Of Offer Of Amendment To Contract)** to achieve the same purposes.

- c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
- (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of **DEFCON 643 (SC2 Price Fixing (Non-qualifying contracts))** (or **DEFCON 127 (Price Fixing Condition for Contracts of Lesser Value)**). Where **DEFCON 643 (SC2)** is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of **DEFCON 643 (SC2)**; or
 - (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

Changes to the Specification

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

7. AUTHORITY REPRESENTATIVES

- a. Any reference to the Authority in respect of:
- (1) the giving of consent;
 - (2) the delivering of any Notices; or
 - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this **Condition 7**.
- b. The Authority's Representatives detailed in **Schedule 3 (Contract Data Sheet)** (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update **Schedule 3 (Contract Data Sheet)** in accordance with **Condition 6 (Formal Amendments to the Contract)**.

8. SEVERABILITY

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

9. WAIVER

- a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

10. ASSIGNMENT OF CONTRACT

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

11. THIRD PARTY RIGHTS

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

12. TRANSPARENCY

- a. Notwithstanding any other term of this Contract, including **Condition 13 (Disclosure of Information)**, the Contractor understands that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.
- b. Subject to clause 12.c the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such Information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- d. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in clauses 12.e to 12.i. Where the Authority publishes Transparency Information, it shall:
 - (1) before publishing, redact any Information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), for the avoidance of doubt, including Sensitive Information;
 - (2) taking account, the Sensitive Information set out in **Schedule 5(Contractor's Sensitive Information (i.a.w. Condition 12))**, consult with the Contractor where the Authority intends to publish Information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what

information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and

- (3) present information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how this Contract is being performed.

Publishable Performance Information

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

13. DISCLOSURE OF INFORMATION

- a. Subject to clauses 13.d to 13.i and **Condition 12(Transparency)** each Party:
 - (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract; .
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
 - (1) is disclosed to their employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

- c. The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. A Party shall not be in breach of Clauses 13.a, 13.b, 13.f, 13.g and 13.h to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
 - (3) can show:
 - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
 - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract; provided that the relationship to any other Information is not revealed.
- e. Neither Party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial, or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this **Condition**.
- f. The Authority may disclose the Information:
- (1) to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
 - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (4) subject to clause 13.g below, on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;
 - (5) subject to clause 13.g below, on a confidential basis for the purpose of the exercise of its rights under the Contract; or
 - (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract; and for the purposes

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

- g.** Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with clauses 13.f.(4) or 13.f.(5) above, the Authority will endeavour to provide the Contractor with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under clause 13.f.(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.
- h.** Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- i.** The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- j.** Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

14. PUBLICITY AND COMMUNICATIONS WITH THE MEDIA

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio, or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

15. CHANGE OF CONTROL OF CONTRACTOR

- a.** The Contractor shall notify the Representative of the Authority in writing at the address given in clause 15.c

 - (1)** as soon as practicable of any intended, planned, or actual change in control of the Contractor and/or their First-Tier Sub-contractor; and
 - (2)** Immediately on the Contractor being aware of any actual change of control of any Lower-Tier Sub-Contractor.
- b.** The Contractor shall include in any such notification any concerns the Contractor may have with the change of control. Such concerns may include but are not limited to potential threats to national security and security of supply. 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.
- c.** Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

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

and emailed to: DefComrcISSM-MergersandAcq@mod.gov.uk

- d. 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. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 calendar days (or as agreed by the parties) of receipt of the Authority's written concerns, for the Authority's consideration.
- e. To the extent that the Authority considers that it is reasonable to do so, the Authority shall work with the Contractor to seek to resolve the Authority's concerns. The Contractor agrees to answer the Authority's questions or requests for clarification promptly.
- f. Where the Authority considers, in its absolute discretion, that the risk may be appropriately mitigated, the Contractor shall implement any agreed mitigations promptly and, in any case, within the timescales required by the Authority. Where the Contractor fails to do so, clause 15.g. shall apply.
- g. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor (and/or request the Contractor to terminate any relevant First-Tier or Lower-Tier Sub-Contractor's contract) within six months of the Authority being notified in accordance with clause 15.a. The Authority shall act reasonably in exercising its right of termination, including, but not limited to, taking into account the Contractor's own assessment of the change of control.
- h. Where the Authority terminates the Contract in accordance with clause 15.g, subject to clause 15.i, the Contractor may request payment for any unavoidable commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. The Authority shall act reasonably when assessing the Contractor's request for payment although the parties agree that the Authority shall retain the sole discretion, acting reasonably, to decide whether to make such requested payment in accordance with clause 15.i.
- i. Any requests for payment by the Contractor must be submitted promptly and the Contractor shall demonstrate to the reasonable satisfaction of the Authority that such request for payment:
 - (1) is reasonable and properly chargeable;
 - (2) would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract; and
 - (3) is fully supported by documentary evidence.
- j. In the event that the Contractor fails to demonstrate any of the conditions set out at 15.i.(1)-(3), the Authority may reject such request for payment.
- k. 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.
- l. The Contractor shall include provisions equivalent to those set out in this Condition in all relevant sub-contracts.

16. ENVIRONMENTAL REQUIREMENTS

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

17. CONTRACTOR'S RECORDS

- a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
 - (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
 - (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Authority has used its resources.
- c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to the provisions of **Condition 13 (Disclosure of Information)**, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
 - (1) the end of the Contract term;
 - (2) the termination of the Contract; or
 - (3) the final payment, whichever occurs latest.

18. NOTICES

- a. A Notice served under the Contract shall be:
 - (1) in writing in the English language;
 - (2) authenticated by signature or such other method as may be agreed between the Parties;
 - (3) sent for the attention of the other Party's Representative, and to the address set out in **Schedule 3 (Contract Data Sheet)**;
 - (4) marked with the number of the Contract; and
 - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in **Schedule 3 (Contract Data Sheet)**, by electronic mail.
- b. Notices shall be deemed to have been received:
 - (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;

- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

19. **PROGRESS MONITORING, MEETINGS AND REPORTS**

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in **Schedule 3 (Contract Data Sheet)** and shall ensure that their Contractor's representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in **Schedule 3 (Contract Data Sheet)**. The reports shall detail as a minimum:
 - (1) performance/Delivery of the Contractor Deliverables;
 - (2) risks and opportunities;
 - (3) any other information specified in **Schedule 3 (Contract Data Sheet)**; and
 - (4) any other information reasonably requested by the Authority.

Supply of Contractor Deliverables

20. **SUPPLY OF CONTRACTOR DELIVERABLES AND QUALITY ASSURANCE**

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
 - (1) comply with any applicable quality assurance requirements specified in **Schedule 3 (Contract Data Sheet)** in providing the Contractor Deliverables; and
 - (2) discharge their obligations under the Contract with all due skill, care, diligence, and operating practice by appropriately experienced, qualified, and trained personnel.
- c. The provisions of clause 20.b. shall survive any performance, acceptance, or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
 - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (2) notify the Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and

- (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

21. MARKING OF CONTRACTOR DELIVERABLES

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

22. PACKAGING AND LABELLING (EXCLUDING CONTRACTOR DELIVERABLES CONTAINING MUNITIONS)

- a. Packaging responsibilities are as follows:
- (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
- (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
- (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
- (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use **DEFFORM 129B (Military Packaging Feedback Report)** to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:
- (1) The Contractor shall provide Packaging which:
- (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
- (b) is labelled to enable the contents to be identified without need to breach the package; and
- (c) is compliant with statutory requirements and this Condition.
- (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e., point of sale packaging) will be acceptable, provided that it complies with the following criteria:

- (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
 - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
 - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 22.i to 22.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
 - (1) The Health and Safety At Work Act 1974 (as amended);
 - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
 - (3) The REACH Regulations 2007 (as amended); and
 - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities, or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
 - (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
 - (2) The Air Navigation (Amendment) Order 2019.
- e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with **Condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables)**.
- f. The Contractor shall comply with the requirements for the design of MLP which include clauses 22.f and 22.g as follows:
 - (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.
 - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:
DES LSOC SpSvcs--SptEng-Pkg1
MOD Abbey Wood
Bristol, BS34 8JH
Tel. +44(0)30679-35353
DESLSOC-SpSvcs-SptEng-Pkg1@mod.gov.uk
 - (b) The MPAS Documentation is also available on the DStan website.

- (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041 and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).
 - (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using **DEFFORM 129a 'Application for Packaging Designs or their Status'**).
 - (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
 - (5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
 - (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
 - (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 22.f.(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
 - (8) The documents supplied under clause 22.f.(6) shall be considered as a contract data requirement and be subject to the terms of **DEFCON 15(Design Rights and Rights to Use Design Information)** and **DEFCON 21(Retention of Records)**.
- g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:
- (1) If the Contractor or their Subcontractor is the PDA they shall:
 - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to **Schedule 3 (Contract Data Sheet)**, prepare the required package design in accordance with clause 22.f.
 - (b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - i. a list of all SPIS which have been prepared or revised against the Contract; and
 - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
 - (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 22.g.(1)(b).
 - (2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
 - (3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their

design from a registered organisation using **DEFFORM 129a (Application for Packaging Designs And Authorisation For Package Design)** before proceeding, then follow clause 22.g.(1)(b).

(4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g.(1)(a) and 22.g.(1)(b).

- h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of **DEFCON 23 (SC2 Special Jigs, Tooling and Test Equipment))** or equivalent condition, as appropriate.
- i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
- (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
- (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
- (b) Each consignment package shall be marked with details as follows:
- i. name and address of consignor;
- ii. name and address of consignee (as stated in the Contract or order);
- iii. destination where it differs from the consignee's address, normally either:
- (i) delivery destination / address; or
- (ii) transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
- iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with **DEFFORM 129J(The Use Of The Electronic Business Delivery Form)**.
- (i) If aggregated packages are used, their consignment marking, and identification requirements are stated at clause 22.l.
- (2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:
- (a) description of the Contractor Deliverable;
- (b) the full thirteen digit NATO Stock Number (NSN);
- (c) the PPQ;
- (d) maker's part / catalogue, serial and / or batch number, as appropriate;
- (e) the Contract and order number when applicable;
- (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
- (g) shelf life of item where applicable;

- (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
 - (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
 - (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
 - (1) the full 13-digit NSN;
 - (2) denomination of quantity (D of Q);
 - (3) actual quantity (quantity in package);
 - (4) manufacturer's serial number and / or batch number if one has been allocated; and
 - (5) the CP&F-generated unique order identifier.
- k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to **Schedule 3 (Contract Data Sheet)**.
- l. The requirements for the consignment of aggregated packages are as follows:
 - (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
 - (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
 - (a) class group number;
 - (b) name and address of consignor;
 - (c) name and address of consignee (as stated on the Contract or order);
 - (d) destination if it differs from the consignee's address, normally either:
 - i. delivery destination / address; or
 - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g., railway station, where that mode of transport is used;
 - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and

placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g., 1/3, 2/3, 3/3;

(f) the CP&F-generated shipping label; and

(g) any statutory hazard markings and any handling markings.

- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with **Condition 6 (Formal Amendments to the Contract)**.
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of **Condition 25 (Timber and Wood-Derived Products)** and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
- o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with **Condition 17 (Contractor's Records)**.
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport, and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
- u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

23. PLASTIC PACKAGING TAX

- a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.

- d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- e. In accordance with **Condition 17 (Contractor's Record)** the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
 - (1) confirmation of the tax status of any Plastic Packaging Component;
 - (2) documents to confirm that PPT has been properly accounted for;
 - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
 - (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 23.f above is accurate.
- h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

24. SUPPLY OF DATA FOR HAZARDOUS SUBSTANCES, MIXTURES AND ARTICLES IN CONTRACTOR DELIVERABLES

- a. Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. The Contractor shall provide to the Authority:
 - (1) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
 - (2) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
 - (3) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and/or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w

of the Article, sufficient information, available to the Contractor, to allow safe use of the Article including, as a minimum, the name of that Substance.

- c. For Substances, Mixtures or Articles that meet the criteria list in clause 24.b above:
- (1) if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS/safety information and forward it to the Authority and to the address listed in clause 24.i below; and
 - (2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. The Contractor shall provide to the Authority a completed **Schedule 6 (Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract: Data Requirements)** in accordance with **Schedule 3 (Contract Data Sheet)**.
- e. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- f. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details in **Schedule 6(DEFFORM 68)** of:
- (1) activity; and
 - (2) the substance and form (including any isotope).
- g. If the Substances, Mixtures or Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details in **Schedule 6 (DEFFORM 68)** of the magnetic flux density at a defined distance, for the condition in which it is packed.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 24.b.(1) and 24.c.(1), any information arising from the provisions of clauses 24.f and 24.g and the completed **Schedule 6 (DEFFORM 68)**, shall be sent directly to the Authority's Point of Contact as specified in the Schedule 3 as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in **Schedule 3 (Contract Data Sheet)**.
- i. So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
- (1) Hard copies to be sent to:
Hazardous Stores Information System (HSIS)
Spruce 2C, #1260,
MOD Abbey Wood (South)
Bristol BS34 8JH
 - (2) Emails to be sent to:
DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk
- j. SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for OME are not to be sent to HSIS and must be held by the respective Authority Delivery Team.

- k. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substances, Mixtures or Articles in Contractor Deliverables shall be regarded as a material breach of Contract under **Condition 43 (Material Breach)** for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with **Condition 43 (Material Breach)**.
- l. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

25. TIMBER AND WOOD-DERIVED PRODUCTS

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:
 - (1) shall comply with the Contract Specification; and
 - (2) must originate either:
 - (a) from a Legal and Sustainable source; or
 - (b) from a FLEGT-licensed or equivalent source.
- b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
 - (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - (3) safeguarding the basic labour rights and health and safety of forest workers.
- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.
- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- e. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with **Condition 17 (Contractor's Records)**.
- g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
 - (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
 - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low-risk source, whether the Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
- (1) verify the forest source of the timber or wood; and
 - (2) assess whether the source meets the relevant criteria of clause 25.b.
- i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with **Condition 6 (Formal Amendments to the Contract)**.
- j. The Contractor shall provide to the Authority, a completed **Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements)**, the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).
- k. The **Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements)** may be amended by the Authority from time to time, in accordance with **Condition 6 (Formal Amendments to the Contract)**.
- l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
- (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at <https://www.forestryengland.uk/>) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
 - (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

26. CERTIFICATE OF CONFORMITY

- a. Where required in **Schedule 3 (Contract Data Sheet)** the Contractor shall provide a Certificate of Conformity (CofC) in accordance with **Schedule 2 (Schedule of Requirements)** and any applicable Quality Plan, the CofC shall be in English unless stated otherwise in the Contract. 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 and the CofC will clearly detail the Articles (quantities, part numbers, batch numbers, NSNs etc) that are contained in a specific delivery.
- b. Each CofC shall be clearly identified as a conformity document and should include the wording "Certificate of Conformity" (or similar) in the title of the document to allow for easy identification.
- c. The Contractor shall consider the CofC to be a record in accordance with **Condition 17 (Contractor's Records)**.
- d. The Information provided on the CofC shall include:

- (1) Contractor's name and address;
- (2) Contractor unique CofC number;
- (3) Contract number and where applicable Contract amendment number and/or CP&F (Contracting, Purchasing and Finance) Purchase Order Number;
- (4) Details of any approved concessions (clearly linked to the relevant item);
- (5) Acquirer name and organisation;
- (6) Delivery address;
- (7) Contract Item Number from **Schedule 2 (Schedule of Requirements)**;
- (8) Line item numbers when there is more than one line item on the CofC;
- (9) Description of Contractor Deliverable, including part number, specification and configuration status;
- (10) NATO Stock Number (NSN) (where allocated);
- (11) Identification marks, batch and serial numbers in accordance with the Specification;
- (12) Quantities;
- (13) A signed and dated statement by the Contractor's Authorised Personnel that the Contractor Deliverables comply with the requirements of the Contract and approved concessions. The signing of the CofC may be in the form of a signature or traceable stamp. The Contractor's Authorised Personnel shall mean a competent person appointed and authorised by the Contractor to sign a CofC.

(14) Exceptions or additions to the above are to be documented.

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

27. ACCESS TO CONTRACTOR'S PREMISES

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

28. DELIVERY / COLLECTION

- a. **Schedule 3 (Contract Data Sheet)** shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
- (1) contact the Authority's Representative as detailed in **Schedule 3 (Contract Data Sheet)** in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
 - (2) comply with any special instructions for arranging Delivery in **Schedule 3 (Contract Data Sheet)**;

- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in **Schedule 3 (Contract Data Sheet)**), a **DEFFORM 129J (The Use Of The Electronic Business Delivery Form)** in accordance with the instructions;
 - (4) be responsible for all costs of Delivery; and
 - (5) Deliver the Contractor Deliverables to the Consignee at the address stated in **Schedule 2 (Schedule of Requirements)** by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative (Transport) as detailed in box 10 of Annex A to **Schedule 3 (Contract Data Sheet)** in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
 - (2) comply with any special instructions for arranging Collection in **Schedule 3 (Contract Data Sheet)**;
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in **Schedule 3 (Contract Data Sheet)**), a **DEFFORM 129J** in accordance with the instructions;
 - (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in **Schedule 3 (Contract Data Sheet)**) by the Delivery Date between the hours agreed by the Parties; and
 - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
 - (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or
 - (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

29. ACCEPTANCE

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

30. REJECTION AND COUNTERFEIT MATERIEL

Rejection:

- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of the Contract, then (without limiting any other right or remedy that the Authority

may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.

- b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in **Schedule 3 (Contract Data Sheet)**, or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

Counterfeit Materiel:

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

- (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is reasonably satisfied does not contain Counterfeit Materiel.
- g. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.e, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.f but the Contractor fails to do so within the period agreed and subject to clause 30.k, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:
- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
 - (2) to pass it to a relevant investigatory or regulatory authority;
 - (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall, at the discretion of the Authority, be shared with the Contractor; and/or
 - (4) to recover the appropriate, attributable, and reasonable costs incurred by the Authority in respect of testing, storage, access, and/or disposal of it from the Contractor; and exercise of the rights granted at clauses 30.g.(1) to 30.g.(3) shall not constitute acceptance under **Condition 29 (Acceptance)**.
- h. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.g.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.g.(4) then the balance shall accrue to the Contractor.
- i. The Authority shall not use a retained Contractor Deliverable or consignment other than as permitted in clauses 30.c – 30.k.
- j. The Authority may report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- k. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 30.c – 30.k except:
- (1) in relation to the balance that may accrue to the Contractor in accordance with clause 30.h; or
 - (2) where it has been determined in accordance with **Condition 40 (Dispute Resolution)** that the Authority has made an incorrect determination in accordance with clause 30.c.(5). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

31. DIVERSION ORDERS

- a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- c. The Authority reserves the right to cancel the Diversion Order.
- d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

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

32. SELF-TO-SELF DELIVERY

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

Licences and Intellectual Property

33. IMPORT AND EXPORT LICENCES

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

risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

- e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request, it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
 - (1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
 - (2) the Authority shall provide sufficient information, certification, documentation, and other reasonable assistance as may be necessary to support the application for the requested variation.
- f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation, and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
- i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation, and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
- j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.
- k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
 - (1) a non-UK export licence, authorisation, or exemption; or
 - (2) any other related transfer or export control, that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in **Condition 34 (Third Party Intellectual Property – Rights and Restrictions)**.

- l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to clause 33.k.(1) or 33.k.(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the **DEFFORM 528(Import and Export Controls)** or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- m. If the information to be provided under clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clause 33.l.
- n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated **DEFFORM 528 (Import and Export Controls)** to the Authority.
- o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clause 33.l or 33.m of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated **DEFFORM 528 (Import and Export Controls)** to the Authority.
- p. Where following receipt of materiel from a Subcontractor or any of their other suppliers' restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated **DEFFORM 528(Import and Export Controls)**. Within [20] 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 [20] days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified, or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with **Condition 6 (Formal Amendments to the Contract)** or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.
- r. In the event that the restrictions notified to the Authority pursuant to clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent **DEFFORM 528 (Import and Export Controls)** submitted to the Authority in accordance with clause 33.l, termination under clause 33.q will be in accordance with **Condition 43 (Material Breach)** and the provisions of clause 33.v will not apply.

- s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of clause 33.k, the Authority shall provide a completed **DEFFORM 528(Import and Export Controls)** or will provide a new or updated **DEFFORM 528 (Import and Export Controls)** delivery of such materiel to the Contractor.
- t. In the event that the Authority becomes aware that the **DEFFORM 528 (Import and Export Controls)** 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(Import and Export Controls)** In the event that the Authority becomes aware that a prior disclosure included in **DEFFORM 528(Import and Export Controls)** submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- u. Where:
- (1) restrictions are advised by the Authority to the Contractor in a **DEFFORM 528(Import and Export Controls)** 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 (Import and Export Controls)** proves to be incorrect or inaccurate; the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of **Condition 6 (Formal Amendments to the Contract)** or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of **Condition 42 (Termination for Convenience)** and as referenced in the Contract.
- v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

34. THIRD PARTY INTELLECTUAL PROPERTY – RIGHTS AND RESTRICTIONS

- a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:
- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
 - (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where

appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;

- (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract. clause 34.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

- b. If the Information required under clause 34.a has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.
- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Condition shall not apply if:
- (1) the Authority has made or makes an admission of any sort relevant to such question;
 - (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
 - (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949;
 - (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in

accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

- (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

- h. The Authority shall assume all liability and shall indemnify the Contractor, their officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
- (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
- (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.
- k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
- (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document, or information for the purpose of performing the Contract; and
- (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents, and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right, or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

- m. The Authority shall assume all liability and indemnify the Contractor, their officers, agents, and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
 - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
- (1) clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
 - (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
 - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
 - (4) the Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
 - (5) following a notification under clause 34.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made, or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
 - (6) the Party conducting negotiations for the settlement of a claim, or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in **Condition 34** shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an

authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

Notification of Intellectual Property Rights (IPR) Restrictions

- r. Where any of the conditions listed below (1 to 3) have been added to the Conditions of the Contract as project specific DEFCONs at Clause 45, or where required by Clauses 34.a. - 34.q., the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in **Schedule 10 (Notification of Intellectual Property Rights (IPR) Restrictions)**.
- (1) **DEFCON 15 (Design Rights and Rights to Use Design Information)**- including notification of any self-standing background Intellectual Property;
 - (2) **DEFCON 90 (Copyright)**- including copyright material supplied under clause 5;
 - (3) **DEFCON 91 (Intellectual Property Rights In Software)**- limitations of Deliverable Software under clause 3b.
- s. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies, or omissions in **Schedule 10 (Notification of Intellectual Property Rights (IPR) Restrictions)**.
- t. Any amendment to Schedule 10 shall be made in accordance with **Condition 6 (Formal Amendments to the Contract)**.

Pricing and Payment

35. CONTRACT PRICE

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in **Schedule 3 (Contract Data Sheet)**.
- b. Subject to clause 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

36. PAYMENT AND RECOVERY OF SUMS DUE

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 36.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 36.b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36.c after a reasonable time has passed.

- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

37. VALUE ADDED TAX

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling, they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with **Condition 40 (Dispute Resolution)**.

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

38. DEBT FACTORING

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with **Condition 10 (Assignment of Contract)**, the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this **Condition 38** shall be subject to:
- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f;
 - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (3) the Authority receiving notification under both clauses 38.b and 38.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under clauses 38.a.(1) and 38.a.(2); and
 - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a.(1) and 38.a.(2).
- d. The provisions of **Condition 36 (Payment and Recovery of Sums Due)** shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

39. SUBCONTRACTING AND PROMPT PAYMENT

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

valid and undisputed for the purposes of clause 39.b.(2) after a reasonable time has passed;
and

- (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 39.b.(1) to 39.b.(4).

Termination

40. DISPUTE RESOLUTION

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

41. TERMINATION FOR INSOLVENCY OR CORRUPT GIFTS

Insolvency:

- a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:
Where the Contractor is an individual or a firm:
- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
 - (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
 - (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
 - (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
 - (6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
 - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or

- (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
 - (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (8) the court making an award of sequestration in relation to the Contractor's estates. Where the Contractor is a company registered in England:
 - (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (10) the court making an administration order in relation to the company; or
 - (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (12) the company passing a resolution that the company shall be wound-up; or
 - (13) the court making an order that the company shall be wound-up; or
 - (14) the appointment of a Receiver or manager or administrative Receiver.
Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 41.a.(9) to 41.a.(14) inclusive above.
- b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.
- Corrupt Gifts:**
- c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):
- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
 - (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

- (2) to recover from the Contractor the amount or value of any such gift, consideration, or commission; and
 - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this Condition, the Authority shall:
 - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.
- f. Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

42. TERMINATION FOR CONVENIENCE

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

- (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
 - (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - (a) all such unused and undamaged materiel; and
 - (b) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
 - (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.
- d. The Authority shall (subject to clause 42.e below and to the Contractor's compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
- (1) the Contractor taking all reasonable steps to mitigate such loss; and
 - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:
- (1) the name of the Contractor shall be substituted for the Authority except in clause 42.c.(1);
 - (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and
 - (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this **Condition 42**.
- g. Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

43. MATERIAL BREACH

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

(2) obtaining the Contractor Deliverable in substitution from another supplier.

44. CONSEQUENCES OF TERMINATION

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

ADDITIONAL CONDITIONS

45. THE PROJECT SPECIFIC DEFCONS AND DEFCON SC VARIANTS THAT APPLY TO THE CONTRACT ARE:

- DEFCON 16 (Edn 06/21) - Repair and Maintenance Information – DEFFORM 315 included.
- DEFCON 21 (Edn 06/21) - Retention of Records
- DEFCON 76 SC2 (Edn 11/22) - Contractor's Personnel at Government Establishments
- DEFCON 82 SC2 (Edn 06/21)) - Special Procedures for Initial Spare
- DEFCON 90 (Edn 06/21) - Copyright
- DEFCON 117 SC2 (Edn 11/17) - Supply of Information for NATO Codification Purposes
- DEFCON 528 (Edn 10/23) - Import and Export Licences- DEFFORM 528 included.
- DEFCON 532B (Edn 12/22) - Protection of Personal Data – DEFFORM 532 included.
- DEFCON 540 SC2(Edn 05/23) – Conflicts of Interest
- DEFCON 565 (Edn 07/23) - Supply Chain Resilience and Risk Awareness- DEFFORM 565 included.
- DEFCON 595 (Edn 03/19) - Automatic Test Equipment Data Requirements
- DEFCON 624 SC2 (Edn 08/22) - Use Of Asbestos
- DEFCON 630 SC2 (Edn 11/17) – Framework Agreements
- DEFCON 637 (Edn 05/17) - Defect Investigation and Liability
- DEFCON 645 (Edn 12/21) - Export Potential
- DEFCON 647 SC2 (Edn 03/24)– Financial Management Information
- DEFCON 658 SC2 (Edn 09/21)– Cyber: “Further to DEFCON 658 the Cyber Risk Profile of the Contract is [Very Low], as defined in Def Stan 05-138.
- DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements
- DEFCON 670 SC2 (Edn 11/17) - Tax Compliance
- DEFCON 675 (Edn 03/21) – Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)
- DEFCON 678 (Edn 09/19) – SME Spend Data Collection- DEFFORM 139 included.
- DEFCON 800 (Edn 12/14) Qualifying Defence Contract
- DEFCON 801 SC2 (Edn 11/17) Amendments to Qualifying Defence Contracts – Consolidated versions
- DEFCON 802 (Edn 12/14) QDC: Open Book on subcontracts that are not Qualifying Sub-contracts (QSC)
- DEFCON 804 SC2 (Edn 11/17) QDC: Confidentiality of Single Source Contract Regulations Information

46. THE SPECIAL CONDITIONS THAT APPLY TO THE CONTRACT ARE:

a. IFRS16 (INTERNATIONAL FINANCIAL REGULATION STANDARDS)

- (1) IFRS 16 is the new accounting standard for leases, mandated by HM Treasury across all government departments, including the Ministry of Defence (MOD), with effect from 1 April 2022.
- (2) The Supplier to confirm if assets are explicitly or implicitly identified in the contract for use by the MOD or not. Where assets are identified, suppliers are requested to provide in writing a list of assets, their location, and the extent of the control or right of use by the MOD.

b. CYBER SECURITY

- (1) The Authority requires the supplier to maintain Cyber Essentials Certification in relation to this requirement for the duration of the contract in conjunction with DEFCON 658(Cyber)-, DEFSTAN 05-138.

c. FUTURE PURCHASES (SCHEDULE 15)

- (1) The Supplier hereby grants to the Authority the irrevocable option to procure additional components as detailed in **Schedule 15- Future Purchase**, it being agreed that Authority has no obligation to procure any purchases.
- (2) Should the Authority decide to exercise any of these options then it will do so by requesting a Firm Price from the Contractor.
- (3) All payments required under this condition 48 shall be made in accordance with **Condition 35- Pricing and Payment** of the contract.
- (4) The number of times the Authority may exercise purchase options during the life of contract in accordance with clause C (2) is not limited.
- (5) For the avoidance of doubt
 - (a) The Authority shall not be liable for any advance commitment that the supplier may enter into the pursuance of the future purchases.

d. DEFECTS AND IRREGULARITIES IN CONTRACT DELIVERABLES

- (1) Any irregularity or defect which is detected and could adversely affect proper functioning, handling, safety, or storage of the contractor deliverables being supplied shall be grounds for rejections in accordance with **condition 30- Reject and Counterfeit Material** to the contract.
- (2) Where a consignment is rejected, the contractor shall rectify the non-compliance to the satisfaction of the Authority at no extra cost and shall deliver the rectified contractor deliverables in accordance with **Schedule 8- Acceptance Criteria**.

e. SAFETY

- (1) During the life of the contract, the supplier shall comply with all the statutory duties and obligations relating to safety and shall be responsible for ensuring that none of the Contract requirements causes the Contractor to be in breach of any statutory duty or obligation relating to safety.

- (2) The supplier shall ensure that the Equipment is safe to operate and maintain and that the requirements stipulated in the Contract for the safety of the Equipment and its impact on the environment are met in full.
- (3) Following contract award, if it appears that any specification or other Contract condition agreed between the supplier and the Authority may render the Contractor in breach of any statutory duty or obligation relating to safety, the Contractor shall immediately bring this to the Authority's attention.
- (4) The Authority shall be entitled to reject the Equipment if any of the safety requirements set out in the contract are not met in full. The supplier shall provide access to records, including Sub-contractor records, for Contract purposes, to enable the MOD-appointed Independent Safety Auditor to carry out safety audits and other assessment activities to meet MOD safety requirements.

f. TESTING

- (1) The Authority reserves the right to test all the repaired Articles.
- (2) If following inspection or testing the Authority considers that the goods do not conform with the relevant specifications, the Authority shall inform the supplier and supplier shall immediately take such remedial action as it is necessary to ensure compliance.

g. REPAIRS

- (1) Repairs on all products on this framework that are currently managed under the STA-S contract (SSP00011) shall continue to be managed in accordance with that agreement.

h. EXPRESS WARRANTY:

(1) General:

(a) The Parts and Labour Warranty shall guarantee each Article against failure under the terms stated below, for 12 (Twelve) months. The period of Warranty for each Article shall commence from the date on which the Article is issued from MOD Donnington to the User Unit or 12 (twelve) months after the supplier's delivery of the Article to MOD Donnington whichever is the sooner. 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 supplied as original equipment.

(b) The Supplier undertakes that the Articles supplied against the Contract including all components supplied thereon by the supplier as original equipment will be free from defect in design, materials and workmanship under normal use and service. The supplier'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 supplied as original equipment.

(2) Exclusions:

(a) This Warranty shall not apply in respect of damage caused by:

(i) Any use or maintenance of the Article not in accordance with the instructions described in the Technical Manuals provided by the Supplier;

(ii) Any use or maintenance of the Article performed by non-authorised personnel;

(iii) War and peacekeeping operations resulting in battle damage

(iv) Operating the Article beyond the plated weight or authorised loading;

(v) Misuse or neglect; and

(vi) Any alterations, modifications or attachments made to the Article without the Contractor's approval.

(b) The Supplier shall not be liable under this Warranty to carry out:

(i) Normal maintenance services, adjustments and the replacement of service items including, but not limited to, oils, filters and lubricants made in connection with such services;

(ii) Repairs to remedy fair wear and tear to any component;

(3) Applicable Countries

(a) The Parts and Labour Warranty applies worldwide.

(4) Warranty Repairs

(a) Articles for repair are to be submitted to the Supplier once the repair has been verified as an acceptable warranty claim. The dismantling and/or refitting of parts to return the Article to a serviceable condition shall be carried out by the supplier at no charge to the Authority. This is to include any necessary cleaning, degassing, testing, and certification required by the repair.

(b) An Article or part present to a Supplier for Warranty work shall be accompanied by the form detailed in **Annex A to Schedule 24 – Repair Process Form** indicating that the repair is a warranty repair. The Repair Request Form shall be submitted to the Contractor within 90 (ninety) Business days of the warranty event.

(c) The Supplier shall complete the warranty work within the turnaround times specified in **Schedule 24 – Repair Process and Price Menu** for the appropriate level of repair.

(d) In the event that warranty is disputed or rejected by the Supplier, the matter shall be resolved between the Supplier and Authority's Representatives detailed in **Schedule 3 (Contract Data Sheet)**. The Supplier shall inform project team of such disputes in writing within 24 (twenty-four) hours of the dispute being identified.

(e) The Supplier 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.

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

(5) Replaced Part Warranty

(a) Should any component fail within the warranty period as a result of manufacturing or material defect, the Supplier shall undertake, at no cost to the Authority, to repair or replace the component free of charge.

(b) Any part replaced by the Supplier free of charge to the Authority under this Warranty, or any approved repairs, shall be guaranteed for the remaining warranty time, or 12

(twelve) months, whichever is the greater from the date that the replacement part is fitted in the Article.

- (c) The Supplier accepts under the terms of this Warranty that the Authority may replace parts by items that are not supplied by the supplier that are a NSAF approved design; however, the Supplier is solely responsible for the application design and will warrant that the parts are fit for use.
- (d) Replaced parts, material and workmanship for parts not purchased through the Supplier are the sole responsibility of the Authority. The parts are common items that are to the same or equivalent technical specification as the original Contractor-supplied part and have been North Atlantic Treaty Organisation (NATO) codified as such.

(6) Maintenance

- (a) Where the Authority carries out routine maintenance or servicing, this will not invalidate the Warranty provided that maintenance procedures comply with the Technical Manuals provided by the Contractor.

(7) Warranty Liability

- (a) Liability under this Warranty is limited at the discretion of the Supplier to the replacement or repair free of charge of such parts that are judged to be defective under the terms of this Warranty provided:
 - (i) Such defects are repaired by the Supplier or by the Authority.
 - (ii) Articles have been stored in accordance with the Supplier's recommended maintenance procedures;
 - (iii) All work is carried out in accordance with Technical Manuals provided by the Supplier and generally accepted engineering practices;
 - (iv) Only Supplier approved parts have been used to repair and maintain the Article, except where common items have been fitted that are the same or equivalent technical specification as the original supplier-supplied part and have been NATO codified as such
 - (v) Any identity plate numbers, marks, warning, or operating labels have not been altered, displaced or removed unless with the Supplier's consent.
- (b) The Supplier shall not be responsible for the quality of any work carried out in the Authority's workshop except the Supplier remains responsible for the quality of spares and the completeness of the Technical Manuals as supplied to the Authority.
- (c) For warranty repairs carried out in the Authority's workshops replaced warranty parts become the property of the Supplier after a claim is accepted. Parts replaced by the Authority will be held for 90 (ninety) Business days for inspection by the Supplier, after which the Authority may dispose of these parts and the cost of such disposal will be charged to the Contractor.

(8) Liability Exclusions

- (a) For the purposes of this Warranty, the following shall not be regarded as failures:
 - (i) Accidental damage;
 - (ii) Battle damage

(iii) Damage caused by:

- i.** User negligence;
- ii.** Misuse;
- iii.** Unsatisfactory repairs or maintenance alterations by the Authority;
- iv.** Applications outside the environment specified in the Systems Requirements Document (SRD) which change the performance or adversely affect the reliability of the Article.
- v.** Neglect

(9) General Provisions

- (a)** Any dispute hereunder shall be dealt with in accordance with DEFCON 530 (Dispute Resolution).
- (b)** This Warranty shall be governed by and construed in accordance with the laws of England.
- (c)** This Warranty shall be entirely without prejudice to the Authority's rights and remedies under the Contract or otherwise including (without limitation) rights and remedies relating to terms and conditions implied by law.

i. BEYOND ECONOMIC REPAIR – FOR WARRANTY REPAIRS ONLY

- (1)** The Contractor shall promptly submit to the Authority's Supply Chain Manager full details of any article considered Beyond Economic Repair.
- (2)** An article shall be BER if the costs of repair exceed 75% of its current purchase value.
- (3)** Should any article be found to be BER, the supplier shall authorise its destruction and deliver replacement article to the same build standard to the Authority at no additional cost.

j. BUILDS STANDARD AND SPECIFICATIONS STANDARD

- (1)** All Articles repaired shall be returned to the Authority configured in accordance with the Complete Equipment Schedule (CES) as contained within the Equipment Breakdown Structure (EBS) at **Schedule 12**.

k. SERVICE IMPROVEMENT

- (1)** The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause. As part of this obligation the Supplier shall identify and report progress annually:
 - (a)** the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
 - (b)** new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - (c)** new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;
 - (d)** changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- (2) The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- (3) If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall send the Supplier a Change Request in accordance with the **Schedule 4 Change Control Procedure**.

I. DELIVERY PROCESS FOR DELIVERIES TO LCS MANAGED DEPOTS

- (1) The Supplier shall (or procure that any of its subcontractors shall) comply with the requirements set out in the Logistics Commodities Services Transformation Authority Managed Material Supplier Manual (Version 2 – LDOC/CMO/V2.0 dated 28 June 2019) issued by the Authority and published on the Authority's Knowledge in Defence (KiD) system (as amended from time to time) (the "LCST Supplier Manual") in respect of all [Articles/goods*] which are:
 - (a) supplied by the Supplier or any of its subcontractors under this [Contract/Agreement*]; and
 - (b) which are to be delivered to depots which are managed and/or operated by Leidos Europe Ltd or its subcontractors pursuant to the Logistics Commodities and Services (Transformation) contract (Contract No. [LCST/0001]) ("LCS(T) Managed Depots").

m. MODERN SLAVERY: THE SUPPLIER:

- (1) shall not use, nor allow its subcontractors to use, forced, bonded or involuntary prison labour.
- (2) shall not require any Supplier employees or the employees of any subcontractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice.
- (3) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- (4) warrants that to the best of its knowledge it is not currently under investigation, inquiry, or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world.
- (5) shall make reasonable enquiries to ensure that its officers, employees, and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
- (6) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its subcontractor's anti-slavery and human trafficking provisions.
- (7) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract.
- (8) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. *Guidance - a statement under*

Section 54 of the Modern Slavery Act 2015 would be sufficient for the required annual slavery and human trafficking report required by Clause (8).

- (9) Shall respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
- (10) shall not use, or allow its employees or subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractor.
- (11) shall not use, or allow its sub-contractors to use, child or slave labour.
- (12) shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its subcontractors to the Authority and Modern Slavery Helpline and relevant national or local law enforcement agencies.
- (13) if the Supplier is in Default under the above Clauses (1) to (12) the Authority may by notice:
 - (i) require the Supplier to remove from performance of the contract any subcontractor, Supplier employees or other persons associated with it whose acts or omissions have caused the default or
 - (ii) immediately terminate the contract.

n. INSURANCE

- (1) The contractor must hold the minimum level of insurance required by law for the duration of the contract.
- (2) In the United Kingdom the current statutory insurances are Employers Liability Insurance and Motor Third Party Liability Insurance.
- (3) Where a Contractor seeks to limit their financial liability under Head of Loss DEFCON 76 – Contractor's Personnel at Government Establishments the contractor must confirm the existence of, scope and level of any relevant Public Liability insurance, Products Liability Insurance and / or Property Damage Insurance held by the contractor.
- (4) Where the contractor intends to mitigate against the risks associated with the Heads of Loss, the contractor must provide details of any insurance provisions they intend to use.

o. CODIFICATION

- (1) Notwithstanding DEFCON 117(Supply of Information for NATO Codification Purposes) the Contractor is wholly responsible for the NATO codification processes in providing the NATO Stock Numbers (NSNs) for the Line Items/Articles in the Schedule of Requirements (SOR) from the UK National Codification Bureau (UKNCB).
- (2) In addition, the Contractor is to note that without an NSN, deliveries of any SOR Items will not be accepted to any location under this Contract and the Authority shall not be responsible for any delays that are incurred as a result.

p. INTEGRATED LOGISTICS SUPPORT (ILS)

- (1) All ILS will be conducted under the SSP00011 STA-S Contract in accordance with DefStan 00-601.

q. OBSOLESCENCE MANGAMENT

- (1) The Contractor shall adhere to IEC 62402:2019 which provides the authoritative guidance on the implementation of cost-effective risk based proactive and reactive OM.
- (2) The Contractor shall generate and provide an Obsolescence Management List (OML) to provide the Authority with an overview of the TALON parts subject to proactive obsolescence and details of the equipment obsolescence status. This information will be used as part of risk management and as an input to through life support cost estimation.
- (3) The contractor shall apply risk-based OM considering probability and associated impact, for the duration of the contract.
- (4) The Contractor shall inform the Authority within 5 working days of becoming aware of an obsolescence issue.
- (5) The Contractor shall provide an Obsolescence Management Report (OMR), as required(as a minimum once per year), enabling the Authority to understand the implications, timescales, and costed options to resolve, including the Contractor's recommended solution.
- (6) Each OMR shall include the following information, as a minimum:
 - (a) Details of the Obsolete / Obsolescent part, including Manufacturers Pt No. and description.
 - (b) The Obsolescence issue, e.g., discontinued part, Life of Need Buy notification etc.
 - (c) Timescales (associated with part availability and equipment impact).
 - (d) Implications and associated impact on the capability.
 - (e) Costed options to resolve the obsolescence issue, including the Contractors recommended solution.
 - (f) Decision Timeframe, the date by which a decision is required to ensure the Obsolescence Issue doesn't impact on the capability or a decision is required to enable resolution option implementation.
 - (g) Obsolescence resolution implementation and associated funding shall be resolved in agreement between the Authority and Contractor on a case-by-case basis.

r. EARNED VALUE MANGAMENT

- (1) The Contractor shall deliver and update monthly over the term of the contract, Earned Value Management (EVM) information in accordance with the EVM Plan contained in Schedule 11.

s. INCENTIVISATION

- (1) The 2% optional incentivisation element of the single source profit rate shall not apply to this contract.
- (2) Where the Authority seeks expedited delivery or any other benefits, the 2% optional incentivisation element of the single source profit rate may apply to that particular order.

t. SOCIAL VALUES

- (1) The Contractor shall include three Social Value KPIs in **Schedule 9 (KPIs)** in accordance with DEFFORM47ST Section D Annex A.

u. AD HOC SERVICES

- (1) The Authority reserves the right to request Ad hoc Services in support of the ARILLS2 for the duration of the contract following delivery and acceptance of the SOR items with no commitment.
- (2) Request for ad hoc service will be initiated by the Authority using Part 1 of the Tasking Proforma as per Schedule 13 to the Contract. The Contractor shall respond by providing a delivery schedule and a detailed breakdown of the price using Part 2 of the Tasking Proforma. Following agreement of a price and schedule, authorisation to proceed will be granted by the Authority's sign-off of Part 3 of the Tasking Proforma
- (3) Areas of possible Ad hoc tasking activity may include (but not limited to):
 - (a) Software Modification
 - (b) Hardware Modification
 - (c) Amendments / Additions to Complete Equipment Schedule (including top level configuration documentation)
 - (d) Technical Documentation Amendments
 - (e) Review / Update of Safety Documentation
- (4) The Contractors response shall include a breakdown of costs to include labour and material costs for every aspect of the tasking, where subcontractors are utilised, these shall be broken down accordingly.

v. LIMITATIONS OF CONTRACTOR LIABILITY

Refer to Annex A Of Terms and Conditions

w. UK OFFICIAL AND UK OFFICIAL-SENSITIVE CONTRACTUAL SECURITY CONDITIONS

REFER TO ANNEX B of Terms and conditions.

47. The processes that apply to the Contract are:

- a. CPF
- b. DSP
- c. ADHOC TASKING FORM

Contract 706392450 for the Supply of Assault Rifle In-Line Low Light Sight 2 (ARILLS 2)

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

For and on behalf of the Company Name [insert company name in full]:

Name, Title and Company Position	
Signature	
Date	

For and on behalf of the Secretary of State for Defence

Name and Title	
----------------	--

Signature	
Date	

1. **LIMITATIONS ON LIABILITY Definitions**

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

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

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

(1) UK GDPR;

(2) DPA 2018; and

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

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

‘DPA 2018’ means the Data Protection Act 2018;

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

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

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

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

Unlimited liabilities

- 1.2. Neither Party limits its liability for:

- 1.2.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 1.2.2. fraud or fraudulent misrepresentation by it or its employees;
 - 1.2.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 1.2.4. any liability to the extent it cannot be limited or excluded by law.
- 1.3. The financial caps on liability set out in Clauses 1.4 and 1.5 below shall not apply to the following:
- 1.3.1. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:
 - 1.3.1.1. the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and Condition 34 (Third Party IP – Rights and Restrictions);
 - 1.3.2. for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
 - 1.3.2.1. the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts);
 - 1.3.3. breach by the Contractor of DEFCON **532B** and **Data Protection Legislation**; and
 - 1.3.4. to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
 - 1.3.5. For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 (SC2) or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clauses 1.4 and/or 1.5 below.

Financial limits

- 1.4. Subject to Clauses 1.2 and 1.3 and to the maximum extent permitted by Law:
 - 1.4.1. [throughout the Term] the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - 1.4.1.1. in respect of DEFCON 76 (SC2) **Redacted under FOIA exemption Section 43 – Commercial Interests Exemption** in aggregate;

- 1.4.1.2. in respect of DEFCON 514 Redacted under FOIA exemption Section 43 – Commercial Interests Exemption in aggregate;
- 1.4.1.3. in respect of DEFCON 611 (SC2) NOT APPLICABLE TO ARILLS2, NIL in aggregate; and
- 1.4.1.4. in respect of DEFCON 612 Redacted under FOIA exemption Section 43 – Commercial Interests Exemption in aggregate;
- 1.4.2. without limiting Clause 1.4.1 and subject always to Clauses 1.2, 1.3 and 1.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be Redacted under FOIA exemption Section 43 – Commercial Interests Exemption in aggregate.
- 1.4.3. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 1.4.1 and 1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 1.4.1 and 1.4.2 of this Contract.
- 1.5. Subject to Clauses 1.2, 1.3 and 1.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 1.6. Clause 1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

- 1.7. Subject to Clauses 1.2, 1.3 and 1.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
 - 1.7.1. indirect loss or damage;
 - 1.7.2. special loss or damage;
 - 1.7.3. consequential loss or damage;
 - 1.7.4. loss of profits (whether direct or indirect);
 - 1.7.5. loss of turnover (whether direct or indirect);
 - 1.7.6. loss of business opportunities (whether direct or indirect); or
 - 1.7.7. damage to goodwill (whether direct or indirect), even if that Party was aware of the possibility of such loss or damage to the other Party.

- 1.8. The provisions of Clause 1.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
 - 1.8.1. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - 1.8.1.1. to any third party;
 - 1.8.1.2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - 1.8.1.3. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 1.8.2. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
 - 1.8.3. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
 - 1.8.4. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
 - 1.8.5. damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);
 - 1.8.6. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
 - 1.8.7. any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
 - 1.8.8. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

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

Invalidity

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

Third party claims or losses

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

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

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

No double recovery

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

..Issued 25 Sept 2023

UK OFFICIAL AND UK OFFICIAL-SENSITIVE CONTRACTUAL SECURITY CONDITIONS

Purpose

1. This document provides guidance for Contractors where classified material provided to or generated by the Contractor is graded UK OFFICIAL or UK OFFICIAL-SENSITIVE. Where the measures requested below cannot be achieved or are not fully understood, further advice should be sought from the UK Designated Security Authority (Email: COO-DSR-IIPCSy@mod.gov.uk).

Definitions

2. The term "*Authority*" for the purposes of this Annex means the HMG Contracting Authority.

3. The term "*Classified Material*" for the purposes of this Annex means classified information and assets.

Security Grading

4. The SENSITIVE marking is used to denote UK OFFICIAL material that is of a particular sensitivity and where there is a need to reinforce the 'need to know'. The Security Aspects Letter, issued by the Authority shall define the UK OFFICIAL-SENSITIVE material that is provided to the Contractor, or which is to be developed by it, under this Contract. The Contractor shall mark all UK OFFICIAL-SENSITIVE documents which it originates or copies during the Contract with the applicable security grading. The Contractor is not required to mark documents graded UK OFFICIAL unless they are transmitted overseas or generated by a Contractor based outside the UK in a third-party country.

Security Conditions

5. The Contractor shall take all reasonable steps to adhere to the provisions specified in the Contract or listed in this Annex. The Contractor shall make sure that all individuals employed on any work in connection with the Contract have notice that these provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract. The Authority must state the data retention periods to allow the Contractor to produce a data management policy. If you are a Contractor located in the UK your attention is also drawn to the provisions of the Official Secrets Acts 1911 to 1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular.

Protection of UK OFFICIAL and UK OFFICIAL-SENSITIVE Classified Material

6. The Contractor shall protect UK OFFICIAL and UK OFFICIAL-SENSITIVE material provided to or generated by it in accordance with the requirements detailed in this Security Condition and any other conditions that may be specified by the Authority. The Contractor shall take all reasonable steps to prevent the loss or compromise of classified material whether accidentally or from deliberate or opportunist attack.

7. Once the Contract has been awarded, where Contractors are required to store or process UK MOD classified information electronically, they are required to comply with the requirements specified in ISNs, Defence Condition 658 and Defence Standard 05-138. Details can be found at the links below:

<https://www.gov.uk/government/publications/industry-security-notices-isns>.
<https://www.dstan.mod.uk/toolset/05/138/000003000.pdf>
<https://www.gov.uk/government/publications/defence-condition-658-cyber-flow-down>

8. All UK classified material including documents, media and other assets must be physically secured to prevent unauthorised access. When not in use UK classified material shall be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be controlled.

9. Disclosure of UK classified material must be strictly controlled in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than to a person directly employed by the Contractor or sub-Contractor.

10. Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or any classified material issued or provided by or on behalf of the Authority otherwise than for the purpose of the Contract, and, same as provided for in paragraph 8 above, the Contractor shall not make use of any article or part thereof similar to the articles for any other purpose.

11. Subject to any intellectual property rights of third parties, nothing in this Security Condition shall restrict the Contractor from using any specifications, plans, drawings and other documents generated outside of this Contract.

12. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 34.

Access

13. Access to UK classified material shall be confined to those individuals who have a "need-to-know", have been made aware of the requirement to protect the material and whose access is essential for the purpose of their duties.

14. The Contractor shall ensure that all individuals requiring access to UK OFFICIAL-SENSITIVE material have undergone basic recruitment checks. This should include establishing proof of identity; confirming that they satisfy all legal requirements for employment by the Contractor; and verification of their employment record. Criminal record checks should also be undertaken where permissible under national/local laws and

regulations. This is in keeping with the core principles set out in the UK Government (HMG) Baseline Personnel Security Standard (BPSS) which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf

Hard Copy Distribution

15. UK OFFICIAL and UK OFFICIAL-SENSITIVE documents may be distributed internally and externally of Contractor premises. To maintain confidentiality, integrity and availability, distribution is to be controlled such that access to documents is only by authorised personnel. They may be sent by ordinary post in a single envelope. The words UK OFFICIAL or UK OFFICIAL-SENSITIVE must not appear on the envelope. The envelope must bear a stamp or marking that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.

16. Advice on the distribution of UK OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of UK OFFICIAL-SENSITIVE shall be sought from the Authority.

Electronic Communication and Telephony and Facsimile Services

17. UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a National Cyber Security Centre (NCSC) Commercial Product Assurance (CPA) cryptographic product or a UK MOD approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the required TLS implementation are available at:

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

Details of the CPA scheme are available at:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

18. Exceptionally, in urgent cases UK OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so, but only with the prior approval of the Authority. However, it shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the Authority require. Such limitations including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the information.

19. UK OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the country of the Contractor and overseas. UK OFFICIAL-SENSITIVE information may be discussed on fixed and mobile telephones only where there is a strong business need to do so.

20. UK OFFICIAL information may be faxed to recipients located both within the country of the Contractor and overseas, however UK OFFICIAL-SENSITIVE information may be

transmitted only where there is a strong business case to do so and only with the prior approval of the Authority.

Use of Information Systems

21. The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here in specific detail; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.

22. The Contractor should ensure **10 Steps to Cyber Security** (Link below) is applied in a proportionate manner for each IT and communications system storing, processing or generating UK OFFICIAL or UK OFFICIAL-SENSITIVE information. The Contractor should ensure competent personnel apply 10 Steps to Cyber Security.

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>.

23. As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data.

24. Within the framework of the 10 Steps to Cyber Security, the following describes the minimum security requirements for processing and accessing UK OFFICIAL-SENSITIVE information on IT systems.

a. Access. Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “*least privilege*” will be applied to System Administrators. Users of the IT System (Administrators) should not conduct ‘standard’ User functions using their privileged accounts.

b. Identification and Authentication (ID&A). All systems are to have the following functionality:

- (1). Up-to-date lists of authorised users.
- (2). Positive identification of all users at the start of each processing session.

c. Passwords. Passwords are part of most ID&A security measures. Passwords are to be “*strong*” using an appropriate method to achieve this, e.g. including numeric and “*special*” characters (if permitted by the system) as well as alphabetic characters.

d. Internal Access Control. All systems are to have internal Access Controls to prevent unauthorised users from accessing or modifying the data.

e. Data Transmission. Unless the Authority authorises otherwise, UK OFFICIAL-SENSITIVE information may only be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in paragraph 17 above.

f. Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.

(1). The following events shall always be recorded:

- (a) All log on attempts whether successful or failed,
- (b) Log off (including time out where applicable),
- (c) The creation, deletion or alteration of access rights and privileges,
- (d) The creation, deletion or alteration of passwords.

(2). For each of the events listed above, the following information is to be recorded:

- (a) Type of event,
- (b) User ID,
- (c) Date & Time,
- (d) Device ID.

The accounting records are to have a facility to provide the System Manager with a hard copy of all or selected activity. There also must be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this then the equipment must be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

g. Integrity & Availability. The following supporting measures are to be implemented:

- (1). Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations),
- (2). Defined Business Contingency Plan,
- (3). Data backup with local storage,
- (4). Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),
- (5). Operating systems, applications and firmware should be supported,
- (6). Patching of Operating Systems and Applications used are to be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.

h. Logon Banners. Wherever possible, a “*Logon Banner*” will be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring. A suggested format for the text (depending on national legal requirements) could be:

“Unauthorised access to this computer system may constitute a criminal offence”

i. Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

j. Internet Connections. Computer systems must not be connected direct to the Internet or “*un-trusted*” systems unless protected by a firewall (a software based personal

firewall is the minimum but risk assessment and management must be used to identify whether this is sufficient).

k. Disposal. Before IT storage media (e.g. disks) are disposed of, an erasure product must be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

Laptops

25. Laptops holding any UK OFFICIAL-SENSITIVE information shall be encrypted using a CPA product or equivalent as described in paragraph 17 above.

26. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites¹. For the avoidance of doubt the term “drives” includes all removable, recordable media e.g. memory sticks, compact flash, recordable optical media (CDs and DVDs), floppy discs and external hard drives.

27. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.

28. Portable CIS devices holding the Authorities' data are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

Loss and Incident Reporting

29. The Contractor shall immediately report any loss or otherwise compromise of any Defence Related Classified Material to the Authority. The term Defence Related Classified Material includes MOD Identifiable Information (MODDII) (as defined in ISN2016/05) and any information or asset that has been given a security classification by the UK MOD. The term also includes classified information and assets held by UK Defence Contractors which are owned by a third party e.g. NATO or a another country for which the UK MOD is responsible.

30. In addition any loss or otherwise compromise of Defence Related Classified Material is to be immediately reported to the UK MOD Defence Industry Warning, Advice and Reporting Point (WARP). This will assist the UK MOD in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the UK MOD's Chief Information Officer (CIO) and, as appropriate, the Contractor concerned. The UK MOD Defence Industry WARP will also advise the Contractor what further action is required to be undertaken.

UK MOD Defence Industry WARP Contact Details

Email: DefenceWARP@mod.gov.uk (OFFICIAL with no NTK restrictions)

RLI Email: defencewarp@modnet.r.mil.uk (MULTIUSER)

Telephone (Office hours): +44 (0) 3001 583 640

Mail: Defence Industry WARP, DE&S PSyA Office

¹ Secure Sites are defined as either Government premises or a secured office on the contractor premises.

MOD Abbey Wood, NH2 Poplar-1 #2004, Bristol, BS34 8JH

31. Reporting instructions for any security incidents involving Defence Related Classified Material can be found in the Incident Reporting Industry Security Notice at:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

Sub-Contracts

32. Where the Contractor wishes to sub-contract any elements of a Contract to sub-Contractors within its own country or to Contractors located in the UK such sub-contracts will be notified to the Contracting Authority. The Contractor shall ensure that these Security Conditions are incorporated within the sub-contract document.

33. The prior approval of the Authority shall be obtained should the Contractor wish to sub-contract any UK OFFICIAL-SENSITIVE elements of the Contract to a sub-Contractor facility located in another (third party) country. The first page of Annex A (MOD Form 1686 (F1686) of ISN 2023/06 is to be used for seeking such approval. The MOD Form 1686 can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162250/ISN_2023-06_Subcontracting_or_Collaborating_on_Classified_MOD_Programmes.pdf

34. If the sub-contract is approved, the Contractor shall flow down the Security Conditions in line with paragraph 32 above to the sub-Contractor. Contractors located overseas may seek further advice and/or assistance from the Authority with regards the completion of F1686.

Physical Destruction

34. As soon as no longer required, UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. Advice shall be sought from the Authority when the classified material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Contractor to be necessary or desirable. Unwanted UK OFFICIAL-SENSITIVE classified material which cannot be destroyed in such a way shall be returned to the Authority.

Private Venture Activities

35. Private Venture (PV) funded (i.e., non-MOD funded) defence related projects and technology fall within one of the following three categories:

- Variants. Variants of standard defence equipment under research, development or in production, e.g., aircraft, military vehicles or ships, etc. with non-standard equipment or fitments, offered to meet special customer requirements or to avoid security or commercial difficulties associated with the sale of an item in-Service with UK Armed Forces;

- Derivatives. Equipment for military or civil use that is not based on standard Service designs but is dependent upon expertise or technology acquired in the course of defence contracts;
- Freelance. Equipment of defence importance that is in no way based on information gained from defence contracts;

36. UK Contractors shall ensure that any PV activity that falls into one of the above categories has been formally security graded by the MOD Directorate of Security and Resilience. Please see PV guidance on the following website further information:

<https://www.gov.uk/government/publications/private-venture-pv-grading-and-exhibition-clearance-information-sheets>

Publicity Material

37. Contractors wishing to release any publicity material or display assets that arises from a Contract to which these Security Conditions apply must seek the prior approval of the Authority. Publicity material includes open publication in the Contractor's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the UK Government.

38. For UK Contractors where the exhibition assets relate to multiple Delivery Teams or for Private Venture defence related material where there is no defined Delivery Team, the Contractor shall request clearance for exhibition from the Directorate of Security and Resilience when it concerns Defence Related Material. See the MOD Exhibition Guidance on the following website for further information:

<https://www.gov.uk/government/publications/private-venture-pv-grading-and-exhibition-clearance-information-sheets>

Export sales/promotion

39. The MOD Form 680 (F680) security procedure enables HMG to control when, how, and if defence related classified material is released by UK Contractors to foreign entities for the purposes of promotion or sales of equipment or services. Before undertaking any targeted promotion or demonstration or entering into any contractual commitments involving the sale or release of defence equipment, information or technology classified UK OFFICIAL-SENSITIVE or above to a foreign entity, a UK Contractor shall obtain F680 approval from the Export Control Joint Unit (ECJU) MOD Team. This includes assets classified UK OFFICIAL-SENSITIVE or above either developed to meet a UK MOD requirement or Private Venture (PV) equipment, as formally advised in a Security Aspects Letter (SAL) issued by the relevant Contracting Authority, or PV Security Grading issued by the MOD Directorate of Security and Resilience. Guidance regarding the F680 procedure issued by ECJU can be found at:

<https://www.gov.uk/government/publications/ministry-of-defence-form-680-procedure-guidance>

40. If a Contractor has received an approval to sub-contract, under an MOD Form 1686 (F1686), for development/production of parts of an equipment, that approval also permits

the production of additional quantities for supply to an export customer, when the Contractor has MOD Form 680 approval for supply of the complete equipment, as long as:

- a) they are identical, except for component obsolescence, to items produced under the UK programme that the approval to subcontract relates to; and
- b) no additional OFFICIAL-SENSITIVE or above material is required to be released to the overseas subcontractor.

Interpretation/Guidance

41. Advice regarding the interpretation of the above requirements should be sought from the Authority.

42. Further requirements, advice and guidance for the protection of UK classified material at the level of UK OFFICIAL and UK OFFICIAL-SENSITIVE may be found in Industry Security Notices at:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

Audit

43. Where considered necessary by the Authority the Contractor shall provide evidence of compliance with this Security Condition and/or permit the inspection of the Contractor's processes and facilities by representatives of the Contractor's National/Designated Security Authorities or the Authority to ensure compliance with these requirements.

Schedule of Requirements (SoR)

Schedule 2 to Contract No. 706392450

This document has been redacted in its entirety, under FOIA Section 43 - Commercial Interests Exemption

Item Number	Description	NSN	Part Number	Packaging Requirements	Delivery Instruction	Delivery Completion Date	Quantity	Unit Firm Price (£ Ex VAT)	Total Firm Price (£ Ex VAT)
Options									
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
								Full Firm Price GBP (Ex VAT)	

In-Service Support									
13									

OTHER DELIVERABLES									
Item No	Description	NSN	Part Number	Packaging Requirements	Delivery Instruction	Delivery Completion Date	Quantity	Unit Firm Price (£ Ex VAT)	Total Firm Price (£ Ex VAT)
14									
15									
16									
17									
18									

Schedule 3 – Contract Data Sheet

General Conditions
Condition 2 – Duration of Contract: The Contract expiry date shall be: Seven (7) years after Contract Award
Condition 4 – Governing Law: Contract to be governed and construed in accordance with: English Law <input checked="" type="checkbox"/> Scots Law clause 4.d <input type="checkbox"/> 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 7 – Authority’s Representatives: The Authority’s Representatives for the Contract are as follows: Commercial: Redacted Under FOIA Section 40 – Personal Information Exemption (as per Annex A to Schedule 3 (DEFFORM 111)) Project Manager: Redacted Under FOIA Section 40 – Personal Information Exemption (as per Annex A to Schedule 3 (DEFFORM 111))
Condition 18 – Notices: Notices served under the Contract shall be sent to the following address: Authority: : DE&S, STSP, DCC, MOD Abbey Wood, #4110 Cedar 2B, Bristol, BS34 8JH (as per Annex A to Schedule 3 (DEFFORM 111)) Contractor: Notices can be sent by electronic mail? YES (See DEFFORM 111 Box 1 and 2 for points of contact)
Condition 19.a – Progress Meetings: The Contractor shall be required to attend the following meetings: As per the Project Statement of Work (SCHEDULE 11)

Condition 19.b – Progress Reports:

The Contractor is required to submit the following Reports: ***As per the Project Statement of Work (SCHEDULE 11)***

Reports shall be Delivered to the following address: ***See Box 2 of DEFFORM 111***

Supply of Contractor Deliverables

Condition 20 – Quality Assurance:

Is a Deliverable Quality Plan required for this Contract? ***NO***

Other Quality Assurance Requirements:

- Quality Management System - The contractor shall maintain a Quality Management system in accordance with ISO9001:2015 (or suitable alternative) throughout the duration of this Contract, with an appropriate scope to meet the contract deliverables, this shall be certificated by an UKAS accredited certification body or equivalent IAF member. This shall be at no additional cost to the Authority.
- NATO Quality Assurance Requirements (Design/Development and Production) - For the purposes of the Contract AQAP2110 Edition D entitled "NATO Quality Assurance Requirements for Design, Development and Production" shall apply where the Contractors Quality Management System meets the requirements of ISO 9001:2015. Certificate of Conformity shall be provided in accordance with DEFCON 627.
- Concessions - For the purpose of the Contract, Concessions shall be managed in accordance with Defence Standard 05-061 Part 1 entitled "Quality Assurance Procedural Requirements - Concessions Issue 7".
- Counterfeit Avoidance Management - For the purposes of the contract, Counterfeit Avoidance Management shall be managed in accordance with Defence Standard 05-135 entitled "Avoidance of Counterfeit Materiel Issue 2".
- Contractor Working Parties - For the purposes of the contract, and Contractor Working Parties shall be provided in accordance with Defence Standard 05-061 Part 4 entitled "Quality Assurance Procedural Requirements - Contractor Working Parties Issue 4".
- Informative Quality Assurance Standards - For Guidance on the application and interpretation Please use the appropriate AQAP Standard Related document (SRD). Where Government Quality Assurance is performed against this Contract, it will be in accordance with AQAP 2070 Edition B. For the purposes of the Contract, ISO 25051:2008 Software engineering - Software Product Quality Requirements and Evaluation (SQuaRE) shall apply.
- Quality Assurance Representative - All Reference to the GQAR in the documents which form part of this Contract shall be read as referring to the Authority specified in Box 7 of the DEFFORM 111.

AQAP 2110 Edition D Version 1 NATO Quality Assurance Requirements for Design, Development and Production. CoC shall be provided in accordance with Clause 26.

Concessions shall be managed in accordance with DEFSTAN 05-061 Pt 1 – Issue 7 - Quality Assurance Procedural Requirements - Concessions

Any contractor working parties shall be provided in accordance with DEFSTAN 05-061 Pt 4 – Issue 4 - Quality Assurance Procedural Requirements - Contractor Working Parties

Processes and controls for the avoidance of counterfeit material shall be established and applied in accordance with DEFSTAN 05-135 – Issue 2 - Avoidance of Counterfeit Materiel

No Deliverable Quality Plan is required reference DEFCON 602B (Edn 12/06) - Quality Assurance (Without Deliverable Quality Plan)

A Certificate of Conformity template for use under this contract is attached at Schedule 18 - Certificate of Conformity

For guidance on the application and interpretation of AQAPs refer to the appropriate AQAP standards Related Document (SRD)

Where GQA is performed against this contract it will be in accordance with AQAP 2070 Edition B Version 4.

Condition 21 – Marking of Contractor Deliverables:

Special Marking requirements: **N/A**

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

A completed Schedule 6 (Hazardous and Non-Hazardous Substances, Mixture or Articles Statement), and if applicable, UK REACH compliant Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:

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

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

Condition 25 – Timber and Wood-Derived Products:

A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to the Authority's Representative (Commercial)

to be Delivered by the following date: **TENDER RETURN**

Condition 26 – Certificate of Conformity:

Is a Certificate of Conformity required for this Contract? **YES**

Applicable to Line Items: **LINE ITEM 2 AS PER SCHEDULE 2**

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

Applicable to Line Items: **LINE ITEM 2 AS PER SCHEDULE 2**

Condition 28.b – Delivery by the Contractor:

The following Line Items are to be Delivered by the Contractor: ***Applicable to Schedule 2 - Schedule of Requirements - All line Items.***

Special Delivery Instructions: ***Not Applicable***

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

Condition 28.c - Collection by the Authority:

The following Line Items are to be Collected by the Authority: ***N/A***

Special Delivery Instructions: ***N/A***

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

Consignor details (in accordance with Condition 28.c.(4)): ***N/A***

Consignee details (in accordance with Condition 22): ***N/A***

Condition 30 – Rejection:

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

Condition 32 – Self-to-Self Delivery:

Self-to-Self Delivery required? ***NO***

If required, Delivery address applicable:

Pricing and Payment

Condition 35 – Contract Price:

All Schedule 2-line items shall be FIRM Price and stated in British Pounds (Sterling) and exclude VAT for the duration of the contract.

Termination

Condition 42 – Termination for Convenience:

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

Other Addresses and Other Information <i>(forms and publications addresses and official use information)</i>

See Annex A to Schedule 3 (DEFFORM 111)

**Schedule 3
Annex A**

DEFFORM 111

(Edn 10/22)

Appendix - Addresses and Other Information

<p>1. Commercial Officer</p> <p>Name: Redacted under FOIA exemption Section 40 – Personal Information</p> <p>Address: DE&S, STSP, DCC, MOD Abbey Wood, #4110 Cedar 2b, Bristol, BS34 8JH</p> <p>Email: Redacted under FOIA exemption Section 40 – Personal Information</p>	<p>8. Public Accounting Authority</p> <p>1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5397</p> <p>2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5394</p>
<p>2. Project Manager, Equipment Support Manager or PT Leader (From whom technical information is available)</p> <p>Name: Redacted under FOIA exemption Section 40 – Personal Information</p> <p>Address: Same as Box 1</p> <p>Email: Stephen.Morgan414@mod.gov.uk ☎ +447811978405</p>	<p>9. Consignment Instructions</p> <p>The items are to be consigned as follows: Request from the Project Manager as detailed in Box 2</p>
<p>3. Packaging Design Authority</p> <p>Organisation & point of contact: As Box 2</p> <p>(Where no address is shown please contact the Project Team in Box 2)</p>	<p>10. Transport. The appropriate Ministry of Defence Transport Offices are:</p> <p>A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH <u>Air Freight Centre</u> IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 <u>Surface Freight Centre</u> IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946 EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946</p> <p>B. JSCS</p> <p>JSCS Helpdesk No. 01869 256052 (select option 2, then option 3) JSCS Fax No. 01869 256837 Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk in the first instance.</p>
<p>4. (a) Supply / Support Management Branch or Order Manager: Branch/Name: As Box 2</p> <p>Tel No:</p> <p>(b) U.I.N.</p>	<p>11. The Invoice Paying Authority</p> <p>Ministry of Defence ☎ 0151-242-2000 DBS Finance Walker House, Exchange Flags Fax: 0151-242-2809 Liverpool, L2 3YL Website is: https://www.gov.uk/government/organisations/ministry-ofdefence/about/procurement</p>
<p>5. Drawings/Specifications are available from N.A</p>	

[Type here]

6. INTENTIONALLY BLANK

12. Forms and Documentation are available through *: Ministry of Defence, Forms and Pubs Commodity Management
PO Box 2, Building C16, C Site
Lower Arnclott
Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)
Applications via fax or email:
LeidosFormsPublications@teamleidos.mod.uk

7. Quality Assurance Representative:

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

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

***NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:
<https://www.kid.mod.uk/maincontent/business/commercial/index.htm>
2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

Schedule 4 - Contract Change Control Procedure (i.a.w. clause 6.d) for Contract No: 706392450

Authority Changes

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

Notice of Change

3. If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "Authority Notice of Change") on the Contractor.
4. The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clauses 7 to 9 (inclusive).
5. The Contractor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):
 - a. would, if implemented, require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable law relevant to such delivery; and/or
 - b. would, if implemented, cause any existing consent obtained by or on behalf of the Contractor in connection with their obligations under the Contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Contractor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
 - c. would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract; and:
 - d. the Contractor notifies the Authority within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c providing written evidence for the Contractor's reasoning on the matter; and
 - e. further to such notification:
 - (1) either the Authority notifies the Contractor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Contractor that the Authority disputes the Contractor's notice under Clause 5.d) it is determined in accordance with Condition 40 (Dispute Resolution), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c; and
 - (2) (where the Authority either agrees or it is so determined that the relevant

Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change) to remove the Contractor's grounds for refusing to implement the relevant Change under Clauses 5.a, 5.b and/or 5.c within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after:

- i) the date on which the Authority notifies in writing the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c); or
- ii) the date of such determination.

6. The Contractor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

Contractor Change Proposal

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

- a. (where the Contractor has not notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5) fifteen (15) Business Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contract shall have received the Authority Notice of Change; or
- b. (where the Contractor has notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5 and:

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

the Contractor shall deliver to the Authority a Contractor Change Proposal. For the avoidance of doubt, the Contractor shall not be

obliged to deliver to the Authority a Contractor Change Proposal where the Contractor notifies the Authority, and the Authority agrees or it is determined further to such notification in accordance with Clause 5, that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c.

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

Contractor Change Proposal – Process and Implementation

10. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
 - a. evaluate the Contractor Change Proposal; and
 - b. where necessary, discuss with the Contractor any issues arising (and (in relation to a Change(s) proposed by the Authority) following such discussions the Authority may modify the Authority Notice of Change) and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties shall have agreed in writing) after receipt of such modification, submit an amended Contractor Change Proposal.
11. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
 - a. either indicate its acceptance of the Change Proposal by issuing a DEFFORM 10B in accordance with Condition 6 (Formal Amendments to the Contract), whereupon the Contractor shall promptly sign and return to the Authority the DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Condition and implement the relevant Change(s) in accordance with such proposal; or
 - b. serve Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such notice of change shall have no further effect).
12. If the Authority rejects the Contractor Change Proposal, it shall not be obliged to give its reasons for such rejection.
13. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred in connection with the implementation of any

Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 11.a and then subject only to the terms of the Contractor Change proposal so accepted.

Contractor Changes

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

Tenderer's Sensitive Information

This list shall be agreed in consultation with the Authority and the Contractor and may be reviewed and amended by agreement. The Authority shall review the list before the publication of any information.

ITT Ref No:
Description of Tenderer's Sensitive Information:
Cross Reference(s) to location of Sensitive Information in Tender:
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:

This document has been redacted in its entirety, under FOIA Section 41 – Information Provided in Confidence Exemption.

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

Contract Number:

Contract Title:

Contractor:

Date of Contract:

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

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

DEFCON 68 ☐; or

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

Contractor's Signature:

Name:

Job Title:

Date:

* check box (☒) as appropriate

To be completed by the Authority

DMC:

NATO Stock Number:

Contact Name:

Contact Address:

Contact Phone Number:

Contact Email Address:

Copy to be forwarded to:

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

Email: DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk

DEFFORM 691A
(Edn 03/13)

Ministry of Defence
Timber and Wood-Derived Products Supplied under the Contract –
Data Requirements

Contract No: 706392450

The following information is provided in respect of clause 10 of DEFCON 691:

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

--	--	--	--	--

SYSTEM ACCEPTANCE (SA) PROCESS

The contractual deliverables required under the Statement of Work (Schedule 11) to this contract are detailed in the table below.

Document Deliverables:

For each document deliverable, the following information as a minimum must appear on the front cover: -

1. Document Title
2. Document Reference Number
3. Document Version Number
4. Name of the Contractor's representative.
5. Position of the Contractor's representative.
6. Signature of the Contractor's representative.
7. Date Signed by the Contractor's representative.
8. Name of the Authority's representative.
9. Position of the Authority's representative.
10. Signature of the Authority's representative.
11. Date Signed by the Authority's representative.

Any disclaimer placed on the document by the Contractor must ensure the Authority has the rights under the contract in accordance with DEFCON 90 Copyright to use the information for any Government purpose.

Until such time the Authority signs the document, it will be considered undelivered and not accepted by the Authority. Upon signature and date by the Authority's representative, the document shall be considered delivered and accepted by the Authority under the contract.

A copy of the document signed by both the Contractor and the Authority must then be sent to the Authority's Commercial Officer as detailed in DEFFORM 111 – Annex A to Schedule 3 of the contract.

Delivery of Equipment:

The process of System Acceptance (SA) enables the Authority to have confidence and where required provide documented evidence that the system is ready to be delivered and fielded to the User in order to meet the Equipment Delivery Date (EDD).

The SA process may also comprise key Contractor deliverables as detailed in the Schedule of Requirements (Schedule 2). This may include document deliverables associated with the MLI of the capability in which qualification testing is required to be proven and documented against the original Statement of

OFFICIAL-SENSITIVE COMMERCIAL

Technical Requirement (STR) – Schedule 11A.

Factory Acceptance Testing (FAT) is a critical aspect of bringing the capability into service. The Contractor may be requested to provide additional evidence to support compliance against the Contracted Level of Performance (LoP) as stated in the Statement of Technical Requirement (Schedule 27) and/or Schedule of Requirements (Schedule 2).

The Authority reserves the right to conduct FAT / Pre-Delivery Inspection prior to the delivery of the first batch of systems at the manufacturing facility. In the event that this inspection is unsatisfactory, the Authority reserves the right to reject the delivery under the relevant milestone either wholly or in part.

The Authority reserves the right to conduct further inspections on subsequent production batches should this be considered necessary by the Authority.

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

Populated data represents suggested KPIs acceptable to the authority. Tenderers may alter or add KPIs as part of the tender submission.

KPI Description*	Rating Thresholds	Frequency of Measurement	Quarter and Year*	Average for Reporting Period	Rating*	Comment*
Delivery Progress This KPI measures performance of the contractor on progress made on orders placed but not yet delivered within the reporting period. It compares reported progress and forecasts to scheduled progress.	Good*: Ahead of schedule	Monthly (forecast of performance)				
	Approaching Target: Performing to plan, no delay forecast, delivery expected at contracted SOR delivery date.					
	Requires Improvement: Anticipated or actual delay of up to 90 calendar days beyond SOR delivery date.					
	Inadequate: Anticipated or actual delay of over to 90 calendar days beyond SOR delivery date.					

Delivered Goods This KPI measures performance of the contractor on the delivery of orders delivered within the reporting period. It compares the actual deliver date to the delivery date contracted for in the Statement of Requirement.	Good*: The aggregated total of days late for all goods deliveries within the period is 0 calendar days	As each SOR reaches its contracted delivery date (report of actual performance)				
	Approaching Target: The aggregated total of days late for all goods deliveries within the period is between 1 and 30 calendar days.					
	Requires Improvement: The aggregated total of days late for all goods deliveries within the period is between 31 and 90 calendar days.					
	Inadequate: The aggregated total of days late for all goods deliveries within the period is greater than 90 calendar days.					

Tackling Economic Inequality. Model Award Criteria: X.X	Good*:					
	Approaching Target:					
	Requires Improvement:					
	Inadequate:					
Fighting Climate Change Model Award Criteria: X.X	Good*:					
	Approaching Target:					
	Requires Improvement:					
	Inadequate:					

Wellbeing Model Award Criteria: X.X	Good*:					
	Approaching Target:					
	Requires Improvement:					
	Inadequate:					

*Publishable fields. Please note, of the four Rating Thresholds, only the 'Good' threshold is published.

Ministry of Defence

DEFFORM 711 – NOTIFICATION OF INTELLECTUAL PROPERTY RIGHTS (IPR) RESTRICTIONS

DEFFORM 711 - PART A – Notification of IPR Restrictions

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

Please continue on additional sheets where necessary.

DEFFORM 711 - PART B – System / Product Breakdown Structure (PBS)

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

Completion Notes

Part A

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

For example, any of the following must be disclosed:

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

Block 1	Enter the associated Invitation to Tender (ITT) or Contract number as appropriate.
Block 2	No action – This sequential numbering is to assist isolation and discussion of any line item
Block 3	Identify a unique reference number for the information / technical data (i.e. a Contractor's document or file reference number) including any dates and version numbers. Documents may only be grouped and listed as a single entry where they relate to the same Article and where the restrictions and IPR owner are the same.
Block 4	Identify the Article(s) associated with the information / technical data by entering a unique identification number / label for the Article(s). This may range from platform level down to sub-system level. This is to enable the Authority to quickly identify the approximate technical boundary to any user rights limitation (e.g. The RADAR or Defensive Aid Sub-System etc). This identification shall be at the lowest level of replaceability of the Article(s) or part of it to which the restrictions apply (i.e. if the restrictions apply to a sub-system the parent system should not be used to identify the restriction boundary). <u>Any entry without a unique identifier shall be treated as a nil entry.</u> NOTE: The Authority does not accept any IPR restrictions in respect of the physical Articles themselves. Block 4 is solely to provide an applied picture to any technical data stated under Block 3 as having IPR restrictions.
Block 5	This is a freeform narrative field to allow a short explanation justifying why this information / technical data has limited rights applying to it.

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

Part B

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

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

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

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

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

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

- e) (FEX) Foreign Export Controlled

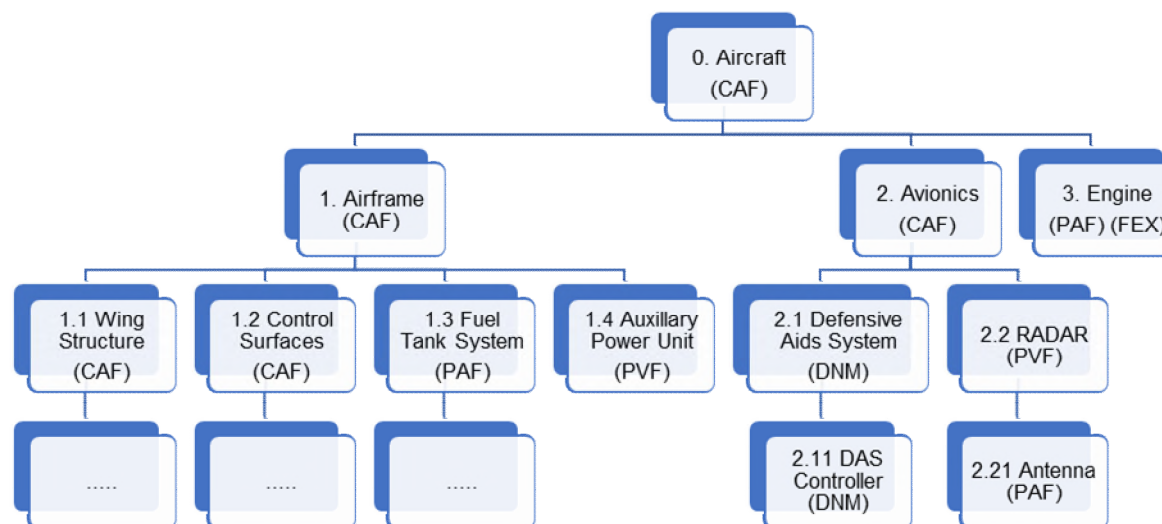
Notes:

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

4. Where items are identified as category (b), the Contractor should provide the number(s) of the previous Contract(s) under which the design was created and the Previous Authority Funding was applied.

Example PBS

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



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

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

Schedule 11 – Statement of Work (SOW)**FOREWORD**

1. THIS DOCUMENT IS THE PROPERTY OF HIS BRITANNIC MAJESTY'S GOVERNMENT and is for information of such persons as only are required to know its contents in the course of their official duties. Any persons finding this document should immediately hand it in to a British Consulate, British Forces Unit or to a UK Police Station for its safe return to the Ministry of Defence, D MoD Sy, London, SW1A 2HB, with particulars of how and where it was found.
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3. If additional copies of this document are required, they must be obtained from either the Project Manager or the Project Office as appropriate. The Project Manager should keep registered holders informed of any amendments subsequently issued.
4. References in this document to any other requirement, specification, drawing or document refer to the latest issues of those documents.
5. The contents of this document in no way absolve the supplier or the user from statutory obligations relating to health and safety at any stage of development, manufacture or use.
6. This document has been devised for use within the Ministry of Defence and by its Contractors in the execution of contracts for the Ministry and subject to the Unfair Contract Terms Act 1977, the Ministry will not be liable in any way whatever (including, but without limitation, negligence on the part of the Ministry, its servants or agents) where the plan is used for other purposes.

DOCUMENT CONFIGURATION CONTROL

This document is managed by STSP DCC STA-PM. This document shall be amended by issue of complete main section, annex or appendix. Amendment status shall be recorded in the footer information of affected pages.

A new issue of the document will be produced upon completion of each project phase.

Version No	Date	Affected Pages	Description of Change	Amendment Incorporated by
(a)	(b)	(c)	(d)	(e)
0.1	20/04/23	All	1 st draft issue	STSP DCC STA PM
1	20/04/23	All	Review	DCGP-21B-05

STATEMENT OF WORK (SOW)

Redacted in its entirety under FOIA Section 43 – Commercial Interests Exemption

SCHEDULE 10A - Statement of Technical Requirement (STR)

DIRECTIONS FOR COMPLETION

1. The Statement of Technical Requirement for this contract is attached below. It is derived from the ARILLS SRD Compliance Statement Matrix and represents the Contracted Level of Performance (LoP) that the delivered systems shall achieve. The Authority will evaluate ARILLS against the Contracted LoP at System Acceptance.

Redacted in its entirety under FOIA Section 43 – Commercial Interests Exemption

EQUIPMENT BREAKDOWN STRUCTURE

Qioptiq to provide detailed EBS containing technical information and Pricing Information for the Procurement of Assault Rifle In-Line Low Light Sights

This schedule shall include CES (Complete Equipment Schedule) *

{ARILLS image – Contractor to Provide}

This document has been redacted in its entirety under FOIA Section 43 – Commercial Interests Exemption

Item No.	NSN	Manufacturers Part Number	Description	Image	D of Q	PPQ	Dimension	Weight

***Complete Equipment Schedule (CES)**

The associated ancillaries, accessories, tools, literature and spares which, when scheduled together, form a composite equipment. The CES is designed to link together all component items of a complete equipment and shows the responsibility for supplying and fitting constituent parts.

Ad Hoc Tasking (AHT) Tasking Form**Part A: AHT Authority Request.**

The right-hand fields are to be completed by the Authority (in accordance with the SoW and the instructions in italics) and issued to the Contractor.

1) AHT Task Number:	
2) Title:	
3) Requirement:	
4) Response Date:	
Authority Authorisation – Project Manager	
5) Name:	
6) Position:	
7) Date:	
Authority Authorisation – Finance Manager	
8) Name:	
9) Position:	
10) Date:	
Authority Authorisation – Commercial Manager	
11) Name:	
12) Position:	
13) Date:	

Ad Hoc Tasking (AHT) Tasking Form**Part B: AHT Contractor Response**

The right-hand fields are to be completed by the Contractor (in accordance with the SoW and the instructions in italics) and returned to the Authority.

1) AHT Task Number:	
2) Title:	
Proposal	
3) Proposal:	
4) Cost Breakdown:	
5) Total Firm Price:	
6) Estimated Start Date:	
7) Estimated Duration:	
Contractor Authorisation	
8) Name:	
9) Position:	
10) Date:	

Ad Hoc Tasking (AHT) Tasking Form**Part C: AHT Agreed Activity**

The right-hand fields are to be completed by the Authority (in accordance with the SoW and the instructions in italics) and issued to the Contractor.

1) AHT Task Number:	
2) Title:	
Agreed Activity	
3) Activity:	
4) Limit of Liability	
5) Start Date:	
6) Completion Date:	
Authority Authorisation – Project Manager	
7) Name:	
8) Position:	
9) Date:	
Authority Authorisation – Finance Manger	
10) Name:	
11) Position:	
12) Date:	
Authority Authorisation – Commercial Manager	
13) Name:	
14) Position:	
15) Date:	

Ad Hoc Tasking (AHT) Tasking Form**Part D: AHT Completion**

The right-hand fields to be completed by the Contractor (in accordance with the SoW and the instructions in italics) and returned to the Authority.

1) AHT Task Number:	
2) Title:	
Completion	
3) Activity:	
4) Cost Breakdown:	
5) Total Cost:	
6) Completion Date:	
Contractor Authorisation	
7) Name:	
8) Position:	
9) Date:	

Ad Hoc Tasking (AHT) Tasking Form**Part A: AHT Authority Request.**

The right-hand fields are to be completed by the Authority (in accordance with the SoW and the instructions in italics) and issued to the Contractor.

1) AHT Task Number:	<i>Field to be populated in the format of XXXXXXXXXX / YYY</i> <i>Where XXXXXXXXXX is the contract Number, and Where YYY is the number of the AHT Task</i>
2) Title:	<i>Field to be populated with a descriptive title of the AHT task.</i>
3) Requirement:	<i>Field to be populated with the Authority's description of the AHT requirement.</i>
4) Response Date:	<i>Field to be populated with the date by which the Authority requires a response to Part A.</i>
Authority Authorisation – Project Manager	
5) Name:	<i>Field to be populated with the name of the Authority's authoriser.</i>
6) Position:	<i>Field to be populated with the position of the Authority's authoriser.</i>
7) Date:	<i>Field to be populated with the name of the Authority's authoriser.</i>
Authority Authorisation – Finance Manager	
8) Name:	<i>Field to be populated with the name of the Authority's authoriser.</i>
9) Position:	<i>Field to be populated with the position of the Authority's authoriser.</i>
10) Date:	<i>Field to be populated with the name of the Authority's authoriser.</i>
Authority Authorisation – Commercial Manager	
11) Name:	<i>Field to be populated with the position of the Authority's authoriser.</i>
12) Position:	<i>Field to be populated with the date of Authority's authorisation.</i>
13) Date:	<i>Field to be populated with the date of Authority's authorisation.</i>

Ad Hoc Tasking (AHT) Tasking Form**Part B: AHT Contractor Response**

The right-hand fields are to be completed by the Contractor (in accordance with the SoW and the instructions in italics) and returned to the Authority.

1) AHT Task Number:	<i>Field to be populated from Part A, 1).</i>
2) Title:	<i>Field to be populated from Part A, 2).</i>
Proposal	
3) Proposal:	<i>Field to be populated with the Contractor's proposal of work to deliver the Authority's requirement.</i>
4) Cost Breakdown:	<i>Field to be populated with a detailed breakdown of all costs, including but not limited to:</i> <i>a) Labour Costs (in conjunction with Labour Rates);</i> <i>b) Materials;</i> <i>c) Subcontractor costs;</i> <i>d) Travel & Subsistence costs (capped at Authority rates);</i> <i>e) Profit Rate.</i>
5) Total Firm Price:	<i>Field to be populated with the total cost.</i>
6) Estimated Start Date:	<i>Field to be populated with an achievable start date.</i>
7) Estimated Duration:	<i>Field to be populated with the estimated duration.</i>
Contractor Authorisation	
8) Name:	<i>Field to be populated with the name of the Contractor's authoriser.</i>
9) Position:	<i>Field to be populated with the position of the Contractor's authoriser.</i>
10) Date:	<i>Field to be populated with the date of Contractor's authorisation.</i>

Ad Hoc Tasking (AHT) Tasking Form**Part C: AHT Agreed Activity**

The right-hand fields are to be completed by the Authority (in accordance with the SoW and the instructions in italics) and issued to the Contractor.

1) AHT Task Number:	<i>Field to be populated from Part A, 1).</i>
2) Title:	<i>Field to be populated from Part A, 2).</i>
Agreed Activity	
3) Activity:	<i>Field to be populated with the agreed work to be performed by the Contractor.</i>
4) Limit of Liability	<i>Field to be populated with the limit to which the Authority will pay for completion of the stated work.</i>
5) Start Date:	<i>Field to be populated with an agreed start date.</i>
6) Completion Date:	<i>Field to be populated with an agreed completion date.</i>
Authority Authorisation – Project Manager	
7) Name:	<i>Field to be populated with the name of the Authority's authoriser.</i>
8) Position:	<i>Field to be populated with the position of the Authority's authoriser.</i>
9) Date:	<i>Field to be populated with the date of Authority's authorisation.</i>
Authority Authorisation – Finance Manger	
10) Name:	<i>Field to be populated with the name of the Authority's authoriser.</i>
11) Position:	<i>Field to be populated with the position of the Authority's authoriser.</i>
12) Date:	<i>Field to be populated with the date of Authority's authorisation.</i>
Authority Authorisation – Commercial Manager	
13) Name:	<i>Field to be populated with the name of the Authority's authoriser.</i>
14) Position:	<i>Field to be populated with the position of the Authority's authoriser.</i>
15) Date:	<i>Field to be populated with the date of Authority's authorisation.</i>

Ad Hoc Tasking (AHT) Tasking Form**Part D: AHT Completion**

The right-hand fields to be completed by the Contractor (in accordance with the SoW and the instructions in italics) and returned to the Authority.

1) AHT Task Number:	<i>Field to be populated from Part A, 1).</i>
2) Title:	<i>Field to be populated from Part A, 2).</i>
Completion	
3) Activity:	<i>Field to be populated with the actual work performed by the Contractor.</i>
4) Cost Breakdown:	<i>Field to be populated with a detailed breakdown of actual costs, including but not limited to:</i> <i>a) Labour Costs (in conjunction with Labour Rates);</i> <i>b) Materials;</i> <i>c) Subcontractor costs;</i> <i>d) Travel & Subsistence costs (capped at Authority rates);</i> <i>e) Profit Rate.</i>
5) Total Cost:	<i>Field to be populated with the final actual cost.</i>
6) Completion Date:	<i>Field to be populated with the date of completion.</i>
Contractor Authorisation	
7) Name:	<i>Field to be populated with the name of the Contractor's authoriser.</i>
8) Position:	<i>Field to be populated with the position of the Contractor's authoriser.</i>
9) Date:	<i>Field to be populated with the date of Contractor's authorisation.</i>

		Year 1 (1 APRIL 2024 TO 31 MARCH 2025)	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Profit Rate Item	Source/responsibility	To be populated as part of tender submission	To be populated prior to 1st April 2025	To be populated prior to 1st April 2026	To be populated prior to 1st April 2027	To be populated prior to 1st April 2028	To be populated prior to 1st April 2029	To be populated prior to 1st April 2030

Note:
 Each firm pricing period uses the CPR for that period
 Each estimated pricing period used the CPR from the firm period
 proceeding it

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Certificate of Conformity			1. Contractor's Unique CoC Serial No.	
2. Contractor's Name and Address:			3. Contract Number:	
			4. Contract Amendment Number:	
			5. Details of Approved Concessions:	
6. Acquirer Name and Address:			7. Deliver Address:	
8. Contract Item Number	9. Product Description and/or Part Number	10. Quantity	11. Shipment Document Numbers	12. Undelivered Quantity
13. Traceability Information reference DEFCON 627 (check the N/A box to indicate no traceability requirements)				
<div style="display: flex;"> <div style="width: 30px; text-align: center;">N/A</div> <div> a) Sub-contract/order number: b) Specification/drawing number including issue: c) Identification marks and/or serial number(s): <input type="checkbox"/> d) Material cast number: e) Batch and/or lot number: f) Test and/or inspection report(s): g) Incoming release note number/reference: </div> </div>				
<ul style="list-style-type: none"> Other Remarks or Comments: (e.g. Cure Date. Shelf Life) 				
<ul style="list-style-type: none"> Contractor's Statement of Quality: It is certified that apart from the concessions noted in block #5 above, the products listed above conform in all respects to the contract requirements 				
Date:	Name and Post Title:		Signature:	

Risk Register

Document redacted in its entirety under FOIA Section 43 - Commercial Interests Exemption

THIS DEED OF GUARANTEE AND INDEMNITY GIVEN BY A PARENT COMPANY IN RESPECT OF A SUBSIDIARY

is made the [] day of [] 20[]

BETWEEN:

- (1) [Insert the name of the name of the Guarantor] [[a company incorporated in England and Wales with number [] whose registered office is at []] **or** [a company incorporated under the laws of [insert country] registered in [insert country] with number [] at [insert place of registration] whose principal office is at []] (“the **Guarantor**”); in favour of
- (2) THE SECRETARY OF STATE FOR DEFENCE (“the **Authority**”)

WHEREAS:

- (a) The Authority proposes to award contract number [insert number] (“the **Contract**”) to [insert contractor’s full corporate name] [insert company registration number] whose registered office is at [insert details] (“the **Contractor**”).
- (b) It is a condition precedent of the Authority entering into the Contract with the Contractor that the Guarantor must first execute and deliver this Deed of Guarantee and Indemnity to the Authority.

Now in consideration of the Authority entering into the Contract, the Guarantor hereby irrevocably and unconditionally agrees with the Authority as follows:

1. The Guarantor shall provide all resources and facilities whether financial or otherwise to enable the Contractor duly to fulfil its obligations in and arising from the Contract subsisting between the Authority and the Contractor at the date of this deed or which shall be entered into at any time after the date of this deed between the Authority and the Contractor (the “**Indemnified Obligations**”);
2. If:
 - a) the Contractor shall fail in any respect duly to perform and observe, or shall otherwise be in breach of, any of the Indemnified Obligations; or
 - b) any of the Indemnified Obligations are or become void, voidable, unenforceable or otherwise ineffective; or
 - c) the Contract is terminated owing to a breach or an event of default on the part of the Contractor; or
 - d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor’s undertaking or assets;

then, forthwith on demand from the Authority the Guarantor shall, as a primary obligation, indemnify the Authority against all losses, claims, liabilities, damages, expenses and costs which may be incurred, met or suffered by the Authority and which arise from or in connection with (whether directly or indirectly) any such matters save that, subject to the

other provisions of this deed, the liability of the Guarantor under this clause shall not exceed the liability of the Contractor to the Authority under the Contract.

3. The Guarantor irrevocably and unconditionally undertakes that all sums received or recovered by the Authority:
 - a) by way of dividend, composition or payment arising from the liquidation, bankruptcy or otherwise of the Contractor may be taken and applied by the Authority in part satisfaction of the losses, claims, liabilities, damages, expenses and costs referred to in paragraph 2 above, and the Guarantor's obligations under this deed shall stand good in respect of the balance;
 - b) under this deed, may be credited to a suspense account and held in such account for so long as the Authority thinks fit pending the application of such monies towards the payment of the Indemnified Obligations;
 - c) from the Contractor in respect of any of the Indemnified Obligations, may be applied by the Authority in any manner and in any order towards any debts owed by the Contractor to the Authority (whether or not relating to the Indemnified Obligations) as the Authority may determine (notwithstanding any appropriation or purported appropriation by any person);
4. The Guarantor shall have no right to be subrogated to the Authority and shall not make any claim against the Contractor (unless instructed so to do by the Authority, in which event the Guarantor shall make such a claim) in respect of the Guarantor's performance under this deed, until the Authority has received payment in full of its claim against the Contractor;
5. This deed shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the Contractor or any other person or, where the Contractor is a partnership, by any change in the partners;
6. The Guarantor shall not be discharged or released from its obligations under this deed:
 - a) by any arrangement or agreement made between the Authority and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor: or
 - b) by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to the Guarantor's disadvantage, to or of, the obligations imposed upon the Contractor or any other person; or
 - c) by any forbearance granted by the Authority to the Contractor or any other person as to payment, time, performance or otherwise; or
 - d) by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this deed relates; or
 - e) by any other matter or thing which but for this provision might exonerate the Guarantor and this notwithstanding that such arrangement, agreement,

renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without the Guarantor's knowledge or assent;

7. No failure to exercise or any delay in exercising on the Authority's part any right or remedy under this deed or under the Contract or any other agreement shall operate as a waiver of such right or remedy;
8. Any certificate or determination by the Authority of the amount due under this deed or under the Contract shall be, in the absence of manifest error, conclusive evidence of the matters to which it relates;
9. No settlement or discharge between the Authority and the Guarantor or the Contractor shall be effective if any payment to the Authority in respect of the Contractor's or the Guarantor's obligations to the Authority is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, the Authority shall be entitled to recover from the Guarantor the amount of such payment as if such settlement or discharge had not occurred;
10. The Authority shall not be obliged, before exercising any of its rights under this deed, to take any action against, or make any demand from, the Contractor or any other person;
11. The Guarantor's obligations under this deed are continuing obligations and shall not be considered satisfied, settled or terminated by the Authority giving any approvals, or taking delivery of any goods, or accepting any performance under the contract and no single, cumulative or partial exercise by the Authority of any right or remedy under or arising from this deed shall prevent any further exercise;
12. All payments under this deed shall be made without set-off, counter-claim or other deduction;
13. The Guarantor shall be bound by all court judgments or arbitration awards relating to the contract or any dispute or matter between the Authority and the Contractor;
14. This deed shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

[The following clause should only be used where the Guarantor is a company incorporated outside of England and Wales]

15. The Guarantor irrevocably appoints Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Guarantor in connection with this Deed or any related matter.

Delivered as a deed on the date of this document.

Executed as a deed by [insert corporate name].

Official

**ARILLS: 706392450
SCHEDULE 18**

DEFFORM 24 (Edn 10/14)

in the presence of Director

..... Director or Company Secretary

Explanatory Notes

1. These explanatory notes are to assist in the completion of the DEFFORM 24 and should not be included in your completed Deed of Guarantee and Indemnity.
2. DEFFORM 24 is a Deed of Guarantee and Indemnity given by a Parent Company in respect of a Subsidiary. It is designed to cover a specific single contract entered into with the MOD by the subsidiary. The purpose of obtaining a Parent Company guarantee and indemnity is to ensure that the company is in a position to be able to execute the contract properly and, failing that, the MOD is reimbursed for any extra expenditure it may incur in making arrangements to have the contract completed elsewhere.
3. Where the company is able to offer a guarantee and indemnity from a parent (holding) company, commercial officers should ensure that they seek the guarantee and indemnity from the ultimate parent (holding) company in the group, rather than an intermediate parent (holding) company, or any other intermediate parent (holding) company where such exists. In such cases the MOD will wish to be satisfied as to the parent (holding) company's ability to provide the cover required, having regard to its financial resources and prospects. You should always ask Cost Assurance and Analysis Service - Industry Analysis (CAAS IA) to advise on this. Where the proposed contract is large, this may entail the holding company agreeing to a separate assessment by CAAS IA. In order to assure consistency throughout the MOD only this DEFFORM can be used as a Deed of Guarantee and Indemnity being given by a Parent Company.

Guidance On Completion

4. The specimen wording of the DEFFORM should be suitable for most circumstances and should not be changed at the request of a Guarantor. You must seek Central Legal Services – Commercial Law (CLS-CL) advice if the Guarantor requests a revision to the template DEFFORM or if the proposed Guarantor is a company registered outside England and Wales. In the latter case, you will need to seek legal advice to confirm both that the proposed Guarantor has power (under its own corporate rules and the laws of its home country) to enter into the deed and that it has executed the deed in a manner that makes it legally binding on the Guarantor.

Introductory Paragraph

5. Insert the contractor's name and, if applicable, registration number of the contractor (unless the contractor is a UK partnership or an overseas company it will be shown on the company letterhead) and the contract / tender details and dates and edit as appropriate.

Paragraph 1

6. Covers the Guarantor's obligations to the MOD to provide all resources and facilities (financial or otherwise) to enable the contractor to meet its obligations under the contract.

Paragraph 2

7. Covers the circumstances under which the guarantee and indemnity may be activated. This also requires the Guarantor to indemnify the MOD on demand against all losses and costs which the MOD has incurred as a result of these circumstances. However, the MOD cannot claim more under this paragraph from the Guarantor than they could claim from the contractor under the contract. If the contract contains a Limitation of Contractor's Liability, this will automatically apply to the indemnity under paragraph 2 of DEFFORM 24.

Paragraph 3

8. Covers the way in which any sums received by the MOD from either the contractor and / or the Guarantor may be used.

Paragraph 4

9. Covers the essential requirement of subrogation (the substitution in law of one party for another as the creditor). This will normally ensure that the Guarantor fulfils its obligations to the MOD before it takes any action to recover any claims of its own from the contractor. However, it also provides for the Guarantor to claim its right of subrogation if instructed to do so by the MOD, if that avenue would mean that it is able to recover money from a contractor in liquidation, which would then enable the Guarantor to meet the MOD claim.

Paragraph 5

10. Maintains the validity of this guarantee and indemnity even if the contractor changes its name, status and even ownership or control etc.

Paragraph 6

11. Prevents the Guarantor from subsequently avoiding its responsibilities even if there have been any amendments to the underlying contract.

Paragraph 7

12. Safeguards the MOD in the event of the MOD's failure or delay to call on the guarantee and indemnity.

Paragraph 8

13. The MOD may self-certify the amount of any demand for payment under the guarantee and indemnity. The Guarantor may only challenge this in cases of "manifest error".

Paragraph 9

14. Covers the scenario where the MOD may have received payment in settlement of a dispute but that payment then becomes void (e.g. if the payee soon thereafter becomes insolvent). The Guarantor still remains liable for the amount of the voided payment.

Paragraph 10

15. Confirms that MOD may seek recompense from the Guarantor without first having to attempt to make recovery from the contractor.

Paragraph 11

16. Confirms that the MOD taking delivery of goods, accepting performance under the contract or making any claim under the deed, does not relieve the Guarantor from its ongoing liability under the deed. This is to prevent accidental waiver of the MOD's rights.

Paragraph 12

17. This is self explanatory.

Paragraph 13

18. Prevents the Guarantor from claiming that it may not be bound by an arbitrator's decision against a contractor, which could force the MOD to litigate the same point a second time with the possibility that a different court may reach a different conclusion.

Paragraph 14

19. Confirms that English law applies to the indemnity, no matter which national law may apply to any contract. Also, if the contractor is not subject to English law, the MOD may use the contractor's national law in order to enforce any claim that may be agreed.

Paragraph 15

20. Delete this clause if the Guarantor is an English company (i.e. a company incorporated in England or Wales). If the Guarantor is a foreign company, then the paragraph should be retained. In either case you should delete the introductory words in bold.

Execution

Insert the full corporate name of the Guarantor in the execution clause, where indicated. For the deed to be effective it is essential that it is signed by two directors of the Guarantor or by one director and the company secretary. It is now not strictly necessary for the Guarantor to apply its corporate seal - although the MOD may request it.

APPLICATION TO SUB-CONTRACT⁵ OR COLLABORATE WITH AN OVERSEAS⁶
CONTRACTOR ON WORK INVOLVING OFFICIAL-SENSITIVE⁷ AND ABOVE
CLASSIFIED INFORMATION (ALSO KNOWN AS F1686)

Request:

1	<p>From: full name and address of contractor submitting application</p> <p>Telephone no: _____ Email: _____</p>
2	Full name and address of selected overseas sub-contractor where work will be undertaken
3	Maximum level of classified material to be released to or produced by the sub-contractor:
4	Description of work to be carried out:
5	Name of Project/Reference Number of prime contract:
6	<p>Full name of point of contact and address of United Kingdom Contracting Authority:</p> <p>Telephone no: _____ Email: _____</p>

Name: _____ Position in company _____

Signature: Date:

Response from Contracting Authority:

Approval is / is not granted⁸ to place the sub-contract detailed above. Further information is attached.⁹

Name: _____ Position/Title: _____

Signature: Date:

Contracting Authority Organisation:

In accordance with data protection legislation, the requesting Government authority will collect, use, protect and retain the information in this form in connection with all matters relating to our personnel administration and policies.

- ⁵ For sub-contracts with UK contractors on work requiring List X clearance to be initiated complete Annex A only
⁶ For sub-contracts/collaboration with an overseas contractor involving the release of OFFICIAL-SENSITIVE or above information complete and submit 1st page only.
⁷ For the MOD this requirement also applies to Reportable OFFICIAL information
⁸ Delete as appropriate
⁹ Delete if not applicable

Annex A to Form 1686

**APPLICATION BY A UK LIST X CONTRACTOR FOR
APPROVAL TO SUB-CONTRACT OR COLLABORATE WITH A
UK CONTRACTOR ON WORK CLASSIFIED SECRET AND
ABOVE
(ALSO KNOWN AS F1686)**

PART 1

A	From: full name and address of UK List X contractor submitting application Telephone no: Email:
B	Full name and address of selected UK sub- contractor
C	Full name and address of selected manufacturer (if different from B)
D	Registration no. of the company & VAT no.: Reg No: VAT No:
E	Names under which the company has previously traded (if applicable):

GUIDANCE FOR COMPLETION OF DEFFORM 528

For the purposes of this form no prioritisation of importance is implied in the ordering of the following sections.

For the purposes of this form “**Materiel**” means any Materiel (including hardware, information, software and/or services) which is regulated by any Export Control Regulations (e.g. International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), etc.).

For the purposes of this form “**Data**” means the information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. It may take forms such as models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories.

For the purposes of this form “**Service**” means the intangible products such as training, technical support or provision of expertise.

For the purposes of this form “**Part Number**” means the part number of the Materiel that is being supplied under the Contract.

PAGE 1

1a - 1f Provide full correspondence name and address of the supplying organisation.

PAGE 2

SECTION 1

For the purposes of this section of the form, each line item of Materiel listed should be at the level that is or will be managed and transacted within the MOD inventory system.

1a to 1i Identify to the best of your knowledge and belief the part number and NATO or National Stock Number (NSN), Manufacturer Name & Address, CAGE/NCAGE Code (NATO Commercial & Government Entity Code identifier), Country of Origin and Security Classification (Security Policy Framework on Gov.uk).

SECTION 2 - Complete this section if the Materiel is subject to US Trade Controls Regulations

2a Indicate whether the Materiel includes US components, parts, accessories, attachments, systems, software, content or is based on, or derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software.

2b - 2c Enter whether the Materiel exported / transferred is listed on US Munitions List (USML) and if so provide the USML Category Number. This information is covered under defense articles 22 U.S.C. 2778 of the Arms Export Control Act (§120.6), technical data (§120.10), software (120.45(f)) and defense services (§120.9). (Guidance is available on the US Directorate of Defense Trade Controls website at <http://www.pmdtdc.state.gov>).

For MOD personnel MOD Policy and Guidance on the application of the ITAR regulations within the MOD can be found in JSP 248 or further support, advice and guidance can be obtained by contacting the DE&S International Relations Group Email: DES IRG-ASSC-CoE (MULTIUSER) - DESIRG-ASSC-CoE@mod.gov.uk.

For Contractor personnel, they should contact their Business Export Compliance Teams for further guidance.

2d Include all references of any applicable authorisations that accompany the Materiel and provide copies to the extent available to you.

2e - 2f Enter whether the Materiel exported / transferred is listed on the Commerce Control List (CCL) and if so provide the Export Control Classification Number (ECCN) listed on the CCL – EAR Part 774, including Materiel that falls into the catch-all categories in the CCL (guidance is available on the Bureau of Industry and Security, US Department of Commerce website at <http://www.bis.doc.gov>). Further support, advice and guidance of the EAR regulations within the MOD can be obtained by contacting the DE&S International Relations Group Email: DES IRG-ASSC-CoE (MULTIUSER) - DESIRG-ASSC-CoE@mod.gov.uk.

2g Indicate whether the Materiel being supplied under EAR is authorised for export to the UK.

2h Details of the EAR Exceptions used.

SECTION 3 - Complete this section if the Materiel is subject to other countries Trade Controls Regulations

3a Indicate whether the Materiel being supplied is not of UK or USA origin, or is it based on, or derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software.

3b Include all references of any applicable authorisations that accompany the Materiel and provide copies to the extent available to you.

SECTION 4 - Complete this section if the Materiel is subject to UK Trade Controls Regulations

4a Indicate whether the Materiel being supplied is derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software for Military use.

4b - 4c Indicate whether the Materiel is listed on the UK Munitions List (UKML) and provide the reference UKML Number .

4d 4e Indicate whether the Materiel being supplied is listed of the UK/EU Dual Use List and if so provide the reference Dual Use Number.

4f Indicate whether the Materiel or Service being supplied is listed as 'No Authorisation Required'.

SECTION 5 - Complete this section if there is an End-Use / End-User Certificate requirement

5a - 5c Indicate whether the Materiel being supplied requires an End-User Certification or Transfer Authority and if so (or being obtained) include copies to the extent available to you.

PAGE 2 - Cell reference descriptors

2a - Does the Materiel originate in USA or contain any US sourced article or technology or have any US Person content contribution, including software?

2b - USML Listed?

2c - USML Category Number:

2d - If answered Yes to 2a and 2b, please provide export authorisation reference, confirmation it is held or the duration to obtain it and provide a copy of the authorisation supplied by the OEM to the extent available to you (for each asset):

2e - CCL Listed?

2f - CCL ECCN:

2g - If answered Yes to 2e is a export authorisation required to export the Materiel to the UK?

2h - Exceptions used:

3a - For Materiel not of UK or USA origin, is an export authorisation required to move the Materiel to the U.K. from the country of origin?

3b - If answered Yes to 3a, please provide export authorisation reference, confirmation it is held or the duration to obtain it and provide a copy of the authorisation supplied by the OEM to the extent available to you (for each asset).

4a - Is the Materiel designed or modified for military use?

4b - UKML Listed?

4c - UKML category number:

4d - Is the Materiel UK/EU Dual Use Listed?

4e - UK/EU Dual Use Number:

4f - Is your product rated as "No authorisation Required"?

5a - For Materiel to be provided by a Contractor to MOD - Is an End-User Certificate required? If Yes MOD to provide.

5b - For Materiel to be provided by MOD to a Contractor - Is re-transfer authority required? If Yes MOD to obtain and the Contractor to provide all reasonable assistance (e.g. DSP-83, TAA).

5c - If answered Yes to 5a or 5b, please provide end-use certificate or re-transfer authority reference(s), confirmation it is held or the duration to obtain it and provide a copy of the authorisation held to the extent available to you (for each asset).

DEFFORM 528 Edn 02/21

Import and
Export Control Information

Contract No.	
1a: Supplier Name	
1b: Address	
1c: City/State	
1d: Post/Zip Code	
1e: Country	
1f: CAGE/NCAGE	

Declaration	
I certify that the information provided on this DEFFORM 528 is true, complete and accurate to the best of my knowledge. If there is any change that effects the control classification as described on this Form or I become aware of anything that causes the response to no longer be true, complete and accurate, or if any inaccuracies are identified, I will inform the other party in writing as soon as I become aware of such change.	
Printed name	
Position or Job Title Held in Company / MOD	
Address	
E-Mail	
Telephone number	
Signed (Duly authorised person)	
Date of signature	

Please print off this Declaration Sheet and provide a signed copy with your Tender submission

OFFICIAL-SENSITIVE COMMERCIAL

1. Definitions

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

"Associated Company" means:

- (a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (b) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

"Cyber Risk Profile" means the level of cyber risk relating to this Contract assessed by the Authority or in relation to any Sub-contract assessed by the Contractor, in each case in accordance with the Cyber Security Model;

"Cyber Implementation Plan" means the plan referred to in Clause 3 of this Condition;

"Cyber Security Incident" means an event, act or omission which gives rise or may give rise to:

- (a) unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
- (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network on which MOD Identifiable Information resides;
- (c) unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- (d) unauthorised or unintentional removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so;

"Cyber Security Instructions" means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;

"Cyber Security Model" and **"CSM"** mean the process by which the Authority ensures that MOD Identifiable Information is adequately

protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;

"CSM Risk Assessment Process" means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for this Contract and any Sub-contract;

"CSM Supplier Assurance Questionnaire" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Condition;

"Data" means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media;

"DEFSTAN 05-138" means the Defence Standard 05-138 as amended or replaced from time to time;

"Electronic Information" means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved in electronic form and held on any information system or electronic communications network;

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

"ISN" means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

"JSyCC WARP" means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

"MOD Identifiable Information" means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;

"NSA/DSA" means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;

"Sites" means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract;

"Sub-contract" means any sub-contract awarded directly by the Contractor as a consequence of or in connection with this Contract;

"Sub-contractor" means a sub-contractor or any Associated Company of the Contractor who provides Contractor Deliverables in connection with this Contract but only to the extent that the Sub-contractor processes, stores or transmits MOD Identifiable Information under their Sub-contract;

"Supplier Cyber Protection Service" means the tool incorporating the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

2. Authority Obligations

2.1. The Authority shall:

- 2.1.1. determine the Cyber Risk Profile appropriate to this Contract and notify the Contractor of the same at the earliest possible date; and
- 2.1.2. notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Profile relating to this Contract, which shall be in accordance with Clause 7.

3. Contractor Obligations

3.1. The Contractor shall, and shall procure that their Sub-contractors shall:

- 3.1.1. comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this Contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Authority and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect their own proprietary information;
- 3.1.2. complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Profile is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain or on receipt of any reasonable request by the Authority;
- 3.1.3. re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- 3.1.4. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge their obligations under this Condition in accordance with Good Industry Practice *provided always that* where there is a conflict between the Contractor's obligations under 3.1.1 above and this 3.1.4 the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as they

- become aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- 3.1.5. comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
 - 3.1.6. notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;
 - 3.1.7. in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Authority and the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
 - 3.1.8. consent to the Authority recording and using information obtained via the Supplier Cyber Protection Service in relation to the Contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and/or Sub-contractor as appropriate; and
 - 3.1.9. include provisions equivalent to those set out in the Annex to this Condition (the "equivalent provisions") in all relevant Sub-contracts.

4. Management Of Sub-Contractors

- 4.1. Provided that it is reasonable in all the circumstances to do so, the Authority agrees that the Contractor shall be entitled to rely on the self-certification by the Sub-contractor of their compliance with this Condition in accordance with 3.1.1 above.
- 4.2. Where a Sub-contractor notifies the Contractor that it cannot comply with the requirements of DEFSTAN 05-138, the Contractor shall require a Sub-contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Contractor and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Sub-contractor. Where the Contractor has reasonably relied on the Sub-contractor's self-certification and the Sub-contractor is subsequently found to be in breach of their obligations, the Contractor shall not be in breach of this Condition.
- 4.3. The Contractor shall, and shall require their Sub-contractors to, include provisions equivalent to those set out in the Annex to this Condition in all

relevant Sub-contracts and shall notify the Authority in the event that they become aware of any material breach of the provisions set out in the Annex by their Sub-contractor.

5. Records

5.1. The Contractor shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or end of Contract term or final payment under this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

5.1.1. copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-contractor; and

5.1.2. copies of all documents demonstrating compliance with 3.1.5 and in relation to any notifications made under 3.1.6 and/or investigation under 3.1.7.

5.2. The Contractor shall, and shall ensure that any Sub-contractor shall, on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records under 5.1 as may be required in connection with this Contract.

6. Audit

6.1. In the event of a Cyber Security Incident the Contractor agrees that the Authority and its representatives, in coordination with the Contractor's NSA/DSA, may conduct such audits as are required to establish (i) the cause of the Cyber Security Incident, (ii) the impact of the Cyber Security Incident, (iii) the MOD Identifiable Information affected, and (iv) the work carried out by the Contractor to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the Authority and the NSA/DSA.

6.2. In addition to the rights in 6.1 above the Authority or its representatives and/or the Contractor's NSA/DSA, either solely or in any combination, may at any time during the Contract and for a period of six (6) years after termination of the Contract or the end of the Contract term or final payment under the Contract whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Contractor continues to hold MOD Identifiable Information:

6.2.1. to review and verify the integrity, confidentiality and security of any MOD Identifiable Information; and

6.2.2. to review the Contractor's and/or any Sub-contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and

6.2.3. to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 5.1.1 and 5.1.2 above.

- 6.3. The Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Contractor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Contractor's information systems or electronic communications networks. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.
- 6.4. The Contractor shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- 6.4.1. all information requested by the Authority within the permitted scope of the audit;
 - 6.4.2. reasonable access to any Sites controlled by the Contractor or any Associated Company used in the performance of the Contract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - 6.4.3. access to any relevant staff.
- 6.5. The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice of its intention to conduct an audit.
- 6.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material breach of the terms of this Condition by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred (which shall be evidence to the Contractor) in the course of the audit.
- 6.7. The Contractor shall in their Sub-contracts procure rights for the Authority to enforce the terms of clause 6 of this Condition in accordance with the Contracts (Rights of Third Parties) Act 1999.

7. General

- 7.1. On termination or expiry of this Contract the provisions of this Condition excepting 3.1.2 and 3.1.3 above shall continue in force so long as the Contractor and/or and Sub-contractor holds any MOD Identifiable Information relating to this Contract.
- 7.2. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 7.3. The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that

there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both *provided always that* the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided that* such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

- 7.4. Subject to 7.3 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with DEFCON 620 or any agreed alternative change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within eight (8) weeks (or other period agreed by the parties) of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Profile or both, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Profile or both whether or not the Contractor Change Proposal is rejected. If the Contractor does not agree with the Authority's determination, then the provisions of DEFCON 530 or any agreed alternative dispute resolution procedure provided for in the Contract shall apply.
- 7.5. The Contractor shall not recover any costs and/or other losses under or in connection with this Condition where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

Annex to DEFCON 658

Cyber

Provisions to Be Included in Relevant Sub-Contracts

1. Definitions

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

"Associated Company" means:

- (a) any associated company of the Sub-contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (b) any parent undertaking or subsidiary undertaking of the Sub-contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

"Cyber Risk Profile" means the level of cyber risk relating to this Sub-contract or any lower tier Sub-contract assessed in accordance with the Cyber Security Model;

"Cyber Implementation Plan" means the plan referred to in Clause 2 of this Condition;

"Cyber Security Incident" means an event, act or omission which gives rise or may give rise to:

- (a) unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
- (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network on which MOD Identifiable Information resides;
- (c) unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- (d) unauthorised or unintentional removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

"Cyber Security Instructions" means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Sub-contract issued by the MOD to the Prime Contractor;

"Cyber Security Model" and **"CSM"** mean the process by which the MOD ensures that MOD Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;

"CSM Risk Assessment Process" means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for this Sub-contract and any lower tier Sub-contract;

"CSM Supplier Assurance Questionnaire" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Sub-contractor to demonstrate compliance with this Condition;

"Data" means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media;

"DEFSTAN 05-138" means the Defence Standard 05-138 as amended or replaced from time to time;

"Electronic Information" means all information generated, processed, transferred or otherwise dealt with under or in connection with this Sub-contract, including but not limited to Data, recorded or preserved in electronic form and held on any information system or electronic communications network;

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

"ISN" means Industry Security Notices issued by the MOD to the Prime Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

"JSyCC WARP" means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

"MOD" means the UK Ministry of Defence of 1 Horseguards, London acting by [] project team at [insert contact details];

"MOD Identifiable Information" means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;

"Prime Contract" means [contract reference] [insert details of prime contract] made between the MOD and the Contractor;

"Prime Contractor" means the Contractor named in the Prime Contract with MOD;

"NSA/DSA" means, as appropriate, the National or Designated Security Authority of the Prime or Sub-contractor that is responsible for the oversight of the security requirements to be applied by the Prime or Sub-contractor and for ensuring compliance with applicable national security regulations;

"Sites" means any premises from which Contractor Deliverables are provided in connection with this Sub-contract or from which the Sub-contractor or any relevant lower tier Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Sub-contractor or any relevant lower tier Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Sub-contract;

"Sub-contract" means any sub-contract at any level of the supply chain, whether this Sub-contract which is awarded by the Prime Contractor or any related Sub-contract which is awarded by the Sub-Contractor or any lower tier Sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Sub-contract;

"Sub-contractor" means a sub-contractor of the Prime Contractor or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with the Prime Contract but only to the extent that the Sub-contractor processes, stores or transmits MOD Identifiable Information under their Sub-contract;

"Supplier Cyber Protection Service" means the tool incorporating the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire;

2. Sub-Contractor Obligations

2.1. The Sub-contractor shall, and shall procure that their lower tier Sub-contractors shall:

2.1.1. comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this Sub-contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the MOD and the Prime Contractor and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect their own proprietary information;

2.1.2. complete the CSM Risk Assessment Process in accordance with the MOD and the Prime Contractor's instructions, ensuring that any change in the Cyber Risk Profile is notified to the MOD, the Prime Contractor and any affected lower tier Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier

Assurance Questionnaire where a change is proposed to the supply chain or on receipt of any reasonable request by the MOD;

- 2.1.3. re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Sub-contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- 2.1.4. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge their obligations under this Condition in accordance with Good Industry Practice *provided always that* where there is a conflict between the Sub-contractor's obligations under 2.1.1 above and this 2.1.4 the Sub-contractor shall notify the Prime Contractor and the MOD in accordance with the notification provisions in DEFSTAN 05-138 as soon as they become aware of the conflict and the MOD shall determine which standard or measure shall take precedence;
- 2.1.5. comply with all Cyber Security Instructions notified to them by the MOD and/or the Prime Contractor as soon as reasonably practicable;
- 2.1.6. notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Prime Contractor and the Sub-Contractor's NSA/DSA immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;
- 2.1.7. in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the MOD, the Prime Contractor and their agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the MOD and the relevant Prime and/or Sub-contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- 2.1.8. consent to the MOD recording and using information obtained via the Supplier Cyber Protection Service in relation to the Sub-contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the Sub-contractor and/or lower tier Sub-contractor as appropriate; and
- 2.1.9. include provisions equivalent to this Condition in all lower tier Sub-contracts (the "equivalent provisions") and, where a lower tier Sub-contractor breaches terms implementing this Condition

in a Sub-contract, the Sub-contractor shall, and shall procure that their lower tier Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract:

2.1.9.1. notify the Prime Contractor and the MOD of any such breach and consult with the Prime Contractor and the MOD regarding any remedial or other measures which are proposed as a consequence of such breach, taking the MOD's views into consideration; and

2.1.9.2. have regard to the equivalent provisions.

3. Records

3.1. The Sub-contractor shall keep and maintain, and shall ensure that any lower tier Sub-contractor shall keep and maintain, until six (6) years after termination of Contract term or final payment under this Sub-contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

3.1.1. copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Sub-contractor and/or any lower tier Sub-contractor.

3.1.2. copies of all documents demonstrating compliance with 2.1.5 and in relation to any notifications made under 2.1.6 and/or investigation under 2.1.7.

3.2. The Sub-contractor shall, and shall ensure that any lower tier Sub-contractor shall, on request provide the MOD, the MOD's representatives and/or the relevant Prime or Sub-contractor's NSA/DSA such access to those records under 3.1 as may be required in connection with this Sub-contract.

4. Audit

4.1. In the event of a Cyber Security Incident the Sub-contractor agrees that the MOD and its representatives, in coordination with the relevant Prime or Sub-contractor's NSA/DSA, may conduct such audits as are required to establish (i) the cause of the Cyber Security Incident, (ii) the impact of the Cyber Security Incident, (iii) the MOD Identifiable Information affected, and (iv) the work carried out by the Sub-contractor to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the MOD and the NSA/DSA.

4.2. In addition to the rights in 4.1 above, the Sub-contractor agrees that the MOD, its representatives and/or the relevant Prime or Sub-contractor's NSA/DSA, either solely or in any combination, may at any time during the Contract and for a period of six (6) years after termination of this Sub-contract or the end of the Sub-contract term or final payment under the Sub-contract whichever is the later, but not more than once in any

calendar year, conduct an audit for the following purposes where the Sub-Contractor continues to hold MOD Identifiable Information:

- 4.2.1. to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
 - 4.2.2. to review the Sub-contractor's and/or any lower tier Sub-contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
 - 4.2.3. to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 3.1.1 and 3.1.2 above.
- 4.3. The MOD, acting reasonably and having regard to the confidentiality and security obligations owed by the Sub-contractor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Sub-contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the MOD any unsupervised access to any of the Sub-contractor's information systems or electronic communications networks. The MOD and the Prime Contractor shall use their reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Sub-contractor and/or lower tier Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received in connection with the audit shall be treated as confidential information.
- 4.4. The Sub-contractor shall, and shall ensure that any lower tier Sub-contractor shall, on demand provide the MOD and any relevant regulatory body, including the relevant Prime or Sub-contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
 - 4.4.1. all information requested by the MOD within the permitted scope of the audit;
 - 4.4.2. reasonable access to any Sites controlled by the Sub-contractor or any Associated Company and any lower tier Sub-contractor used in the performance of the Sub-contract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Sub-contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - 4.4.3. access to any relevant staff.
- 4.5. Where the Prime Contractor is provided with notice of the audit by the MOD and/or the relevant NSA/DSA, the Prime Contractor shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice to the Sub-contractor of the intention to conduct an audit.
- 4.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under

this Condition, unless the audit identifies a material breach of the terms of this Condition by the Sub-contractor and/or a lower tier Sub-contractor in which case the Sub-contractor shall reimburse the Prime Contractor and the MOD as appropriate for all the reasonable costs incurred in the course of the audit.

- 4.7. The Sub-Contractor shall in their lower tier Sub-contracts procure rights for the MOD to enforce the terms of this clause 4 of this Condition in accordance with the Contracts (Rights of Third Parties) Act 1999.

5. General

- 5.1. On termination or expiry of this Sub-contract the provisions of this Condition shall continue in force so long as the Sub-contractor and/or any lower tier Sub-contractor holds any MOD Identifiable Information relating to this Sub-contract.
- 5.2. Termination or expiry of this Sub-contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Sub-contract which existed at or before the date of termination or expiry.
- 5.3. The Sub-contractor agrees that the MOD has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then the Sub-contractor may seek an adjustment to the contract price from the Prime Contractor for any associated increase or decrease in costs and the Sub-contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both *provided always that* the Sub-contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided that* such costs shall not be allowed unless they are considered to be appropriate, attributable to this Sub-contract and reasonable in all the circumstances.
- 5.4. The Sub-contractor shall not recover any costs and/or other losses under or in connection with this Condition where such costs and/or other losses are recoverable or have been recovered by the Sub-contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Sub-contractor is able to or has recovered such sums in any other provision of this Sub-contract or has recovered such costs and/or losses in other contracts between the Sub-contractor and the Prime Contractor or with other bodies.

PROJECT: Assault Rifle In-Line Low Light Sight 2**Cyber Security**

The Cyber Risk Level for ARILLS2 has been assessed as a **Very Low** risk project. The associated Risk Assessment Reference (RAR or RA) is: **546046332**

DE&S have included DEFCON 658 (SC2) ¹ as part of the ITT process. This DEFCON is intended to protect MOD Identifiable Information transferred during the life of the contract and sometimes post contract. MOD Identifiable Information is defined in DEFCON 658 (SC2) as "All Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure."

Tenderers must complete a Supplier Assurance Questionnaire (SAQ) to demonstrate their compliance with the cyber security controls relating to the system that would process the bid or MOD material. Def Stan 05-138 (appendix 1) provides further advice and specific guidance on classifications. If the SAQ response is not accepted as sufficient by the online tool, then tenderers should show how they intend to achieve compliance by completing a Cyber Implementation Plan.

Suppliers intending to sub-contract part of a Ministry of Defence contract will also be required to complete a Risk Assessment for the sub-contract(s), and sub-contractors will be required to complete an SAQ in response to it.

You can find further information on Cyber Security by clicking [here](#) or by searching for DCPD on GOV.UK.

Please click this link to register with the online tool and complete your questionnaire:

<https://suppliercyberprotection.service.xgov.uk/>.

Alternatively a copy of the appropriate SAQ, along with submission instructions is attached to this schedule as Annex B.

¹ Copy of DEFCON 658 (SC2) is attached as Annex A to this Schedule to the terms and conditions of this contract.

Supplier Assurance Questionnaire (SAQ) for a contract with a Very Low Cyber Risk Profile

How to use this form

This Supplier Assurance Questionnaire (SAQ) is part of the Cyber Security Model.

You will need to:

- complete the SAQ to give information about yourself, your organisation and the measures you have in place to protect against cyber threats
- submit the completed SAQ to the Cyber & Supply Chain Security (CSCS) team (UKStratComDD-CyDR-DCPP@mod.gov.uk.)
- check the email you will receive back from the CSCS team – this will confirm whether you are compliant with the contract's Cyber Risk Profile, and should arrive within 2 working days
- keep copies of the completed SAQ and the email you receive from the CSCS team and attach them when you submit your tender response

Check whether you are compliant with the contract's Cyber Risk Profile before you submit the SAQ

For each of the Cyber Risk Profile questions, asterisks show the compliant answers. If you give an answer that is not compliant, you must answer an extra question before the declaration at the end of the form.

Where possible send a completed PDF via email, rather than a scan of a printed version (scanned submissions will take longer to process)

Section 1 Context and contract details

Risk Assessment Reference (RAR) for this contract

R	A	R	—	
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(This should be populated when you receive this form. If not, please return to MOD)

Your name

--

Your email address

--

Your Organisation's Name

--

Who is responsible for Information Security in support of this contract?

Full Name:

Email Address:

Contact Phone Number:

Your organisation's Dun & Bradstreet D-U-N-S number

If you do not have one, you can request one for free on Dun & Bradstreet's website at <https://www.dnb.co.uk/duns-number/lookup/request-a-duns-number.html>

--

Is this form being completed as an Annual SAQ Renewal or Is this the first SAQ to be completed for this contract?

- ☐ First Completion for this contract
- ☐ On major change to delivery of contract (Please add previous SAQ reference)

--

Which statement best describes your organisation? Tick all the boxes that apply.

- ☐ My organisation is an SME (small or medium-sized enterprise)
- ☐ I am a sole trader
- ☐ My organisation works from multiple locations
- ☐ My organisation has locations outside of the UK

Bid / Contract Details

Bid / Contract name

Bid / Contract description

(Max 50 words, OFFICIAL information only)

Section 2 MOD Accreditation

In support of this contract only, please indicate whether MOD Identifiable Information is, or will be, processed on MOD accredited ICT systems. If the system you will use to support this contract is accredited, please enter the DART name and/or ID.

There is no waiver against DEF STAN 05-138.

- ☐ The ICT systems we will use, have no MOD accreditation
- ☐ The ICT systems we will use for OFFICIAL-SENSITIVE have MOD Accreditation (Please detail Below)
- ☐ The ICT systems we will use have current MOD accreditation to process data at the appropriate classification (Please detail below)

Dart System 1 Name

TOA Reference

(Dart References can be TOA- or S-)

Dart System 2 Name

TOA Reference

(Dart References can be TOA- or S-)

Dart System 3 Name

TOA Reference

(Dart References can be TOA- or S-)

Section 3 Security Certification

VL01 Does your organisation have Cyber Essentials certification that covers the scope required for all aspects of the contract, and do you commit to maintaining this standard for the duration of the contract? Choose one option only.

- ☐ No (Please complete the Cyber Implementation Plan)
- ☐ No, but we have a plan to put this in place by the point of contract award (Please complete the Cyber Implementation Plan)
- ☐ *Yes (add the certification details below)

Certification body

--

Certification number

--

Certification expiry date (DDMMYY)

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If you are not compliant with the Cyber Risk Profile for the contract

For each of the Cyber Risk Profile questions, asterisks show the compliant answers. If you give an answer that is not compliant, you must answer the question below.

When will the controls be implemented? Choose one option only.

- ☐ Before contract commencement, and will provide a Cyber Implementation Plan
- ☐ Not before contract commencement, but we have provided a Cyber Implementation Plan (CIP) with this response
- ☐ We will be unable to achieve compliance we have provided a Cyber Implementation Plan (CIP) with this response

Guidance on Cyber Implementation Plans (CIPs) can be found at:
<https://www.gov.uk/government/publications/cyber-implementation-plan-cip>

Section 10 Declaration

All suppliers must read this information and tick the box to confirm agreement before submitting a Supplier Assurance Questionnaire.

- I have authority to complete the Supplier Assurance Questionnaire
- The answers provided have been verified with all appropriate personnel and are believed to be true and accurate in all respects
- All information which should reasonably have been shared has been included in the responses to the questions
- Should any of the information on which the responses to this Supplier Assurance Questionnaire are based change, my company undertakes to notify the Ministry of Defence as soon as is reasonably practicable
- My company acknowledges that the Ministry of Defence reserves the right to audit the responses provided at any time

For and on behalf of my company, I confirm the above statements

Name:	(Type Name)
Email Address:	
Mobile Phone Number:	

Carefully check that you have responded to every relevant question before you submit your SAQ.

You will need to attach copies of your completed SAQ\CIP and the email you receive from the Cyber Supply Chain Security team when you submit your tender response.

Where possible send a completed PDF via email, rather than a scan of a printed version to UKStratComDD-CyDR-DCPP@mod.gov.uk

STATEMENT OF GOOD STANDING

Intentionally Left Blank

Statement Relating to Good Standing

Contract Title: Assault Rifle Inline Low Light Sight 2

Contract Number: 706392450

1. We confirm, to the best of our knowledge and belief, that Qioptiq Ltd including its directors or any other person who has powers of representation, decision or control of [Insert Your Company name here] has not been convicted of any of the following offences:
 - a. conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of Council Joint Action 98/733/JHA;
 - b. corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
 - c. the offence of bribery;
 - d. fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of:
 - i. the offence of cheating the Revenue;
 - ii. the offence of conspiracy to defraud;
 - iii. fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;
 - iv. fraudulent trading within the meaning of section 458 of the Companies Act 1985;
 - v. defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;

- vi. an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
 - vii. destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;
- e. money laundering within the meaning of the Money Laundering Regulations 2007; or
- f. any other offence within the meaning of Article 45(1) of Directive 2004/18/EC as defined by the national law of any relevant State.

2. Qioptiq Ltd further confirms to the best of our knowledge and belief that it:

- a. being an individual is not bankrupt or has not had a receiving order or administration order or bankruptcy restrictions order made against him or has not made any composition or arrangement with or for the benefit of his creditors or has not made any conveyance or assignment for the benefit of his creditors or does not appear unable to pay or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has not granted a trust deed for creditors or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of his estate, or is not the subject of any similar procedure under the law of any other state;
- b. being a partnership constituted under Scots law has not granted a trust deed or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of its estate;
- c. being a company or any other entity within the meaning of section 255 of the Enterprise Act 2002 has not passed a resolution or is not the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, nor had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is not the subject of similar procedures under the law of any other state;
- d. has not been convicted of a criminal offence relating to the conduct of its business or profession;

- e. has not committed an act of grave misconduct in the course of its business or profession;
- f. has fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the relevant State in which the economic operator is established;
- g. has fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the relevant State in which the economic operator is established;
- h. is not guilty of serious misrepresentation in providing any information required by this Statement;
- i. in relation to procedures for the award of a public services contract, is licensed in the relevant State in which he is established or is a member of an organisation in that relevant State when the law of that relevant State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member.

Organisation's name	
Signed	
Position	
Date	

Intentionally Left Blank



Redacted under FOIA exemption Section 40 –
Personal Information

SKYPE: Redacted under FOIA exemption
Section 40 – Personal Information

Redacted under FOIA exemption Section 40 –
Personal Information



Defence Equipment & Support
Cedar 2A & #4110
MOD Abbey Wood
Bristol BS34 8JH



19-Sep-24

PROJECT ARILLS2 – SECURITY ASPECTS LETTER

1. On behalf of the Secretary of State for Defence, I hereby give you notice that the following aspects of the ARILLS2 Project are designated with the following security classifications with regard to JSP 440:

<u>Complete Equipment:</u>	<u>Project Title:</u> ARILLS2
<u>During Concept & Assessment:</u>	<u>Manufacturer:</u> Qioptiq UK Ltd
OFFICIAL SENSITIVE	<u>AD Star List Number:</u>
<u>In-Service:</u>	<u>Project Branch:</u> STSP DCC-STA
OFFICIAL SENSITIVE	
<u>Sponsor:</u> ARMY	
<u>Development Status:</u> Manufacture / In-Service	

**Redacted in its entirety under FOIA Section 43 – Commercial Interests
Exemption**

SCHEDULE 23– REPAIR REQUEST FORM

Part A: REPAIR REQUEST - to be completed by the Authority.

1.) Repair Demanding Authority:

2.) Name: Signed: Date:

Contract Number:

Repair Order Number:

3.) Serial Number:

4.) NSN/ Description:

5.) Description of fault where known:

6.) Collection and Return Delivery Point: B54 MOD Donnington, Telford, Shropshire, UK

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Part. B: REPAIR RESPONSE - to be completed by the Contractor.

7.) Date item received

8.) Timescale:..... days for turnaround (In accordance with Turnaround times in Schedule 23-REPAIR PROCESS FORM)

9.) Expected Return Date.....

10.)Warranty (delete as appropriate)

a.) Warranty

b.) Non-Warranty

11.)The Repair Quotation (delete as appropriate):

a.) Multiple repair total cost (Ex-VAT) with report and quote submitted for STSP SCM approval.

b.) Repair falls under Warranty – no cost.

c.) Item beyond economic repair / complete replacement required.

12.)Total cost of repair/replacement: £.....(Ex-VAT)

13.)Return date to B54 MOD Donnington, Telford, Shropshire, UK

Name: Signed: Date:

Part C: REPAIR REQUEST AUTHORISATION - to be completed by the Authority's SCM Mgr.

14.) a.) I hereby confirm my acceptance of your firm price quotation for the completion of

Repair Request Number and request you to proceed.

Firm Price quotation £ (Ex-VAT) Completion Date:

b.) I do not wish you to proceed with the Repair Request Number.....and
request you follow the return procedures for the Repair Item to be sent back to B54 MOD
(Donnington)

c.) I do not wish you to proceed with the Repair Request Number.....and
request you dispose of the Repair Item.

d.) Additional Instructions for disposal:
.....

Name: Signed: Date: