

**XXX**

**XXX**

Ministry of Defence

Head Office Commercial

Main Building

Whitehall

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|  |  |
|  | Your Reference: |
|  |  |
|  | Our Reference: 710230450 |
|  |  |
|  | Date: 19/1/23 |
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|  |  |

Invitation To: Tender Reference Number: 710230450 - Provision of Resident Support Teams at 2 Personnel Rehab Centres

1. You are invited to tender for the above requirement in a competition, as per the following documentation.
2. The requirement is Provision of Resident Support Teams at 2 Personal Rehab Centres (Fully Managed Service).
3. The anticipated date for the Contract Award decision is 1-Mar-2024 but please note that this is indicative only and may change. The successful Tenderer will take over provision of the service from:
	1. 12th April 2024 for Catterick Personnel Recovery Centre; and,
	2. 26th April 2024 for Tidworth Personnel Recovery Centre.
4. You must submit your Tender to the Defence Sourcing Portal by 16-Feb-2024 23:59:59 (GMT) to be considered and evaluated.

Yours Faithfully,

**XXX**

**Invitation To Tenderfor Provision of Resident Support Teams at 2 Personnel Rehabilitation Centres**

**Contents**

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

This invitation consists of the following documentation:

• DEFFORM 47 – Invitation to Tender. The DEFFORM 47 sets out the key requirements that Tenderers must meet to submit a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:

o Section A – Introduction

o Section B – Key Tendering Activities

o Section C – Instructions on Preparing Tenders

o Section D – Tender Evaluation

o Section E – Instructions on Submitting Tenders

o Section F – Conditions of Tendering

o DEFFORM 47 Annex A – Tender Submission Document (Offer)

 Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations

• Contract Documents (As per the contents table in the Terms and Conditions)

o Terms & Conditions which includes the Schedule of Requirements and any additional Schedules, Annexes and/or Appendices

• DEFFORM 111 – Appendix to Contract - Addresses and Other Information

• DEFFORM 539A – Tenderer’s Sensitive Information (or SC1B Schedule 4 or SC2 Schedule

**Section A – Introduction**

**DEFFORM 47 Definitions**

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

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

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

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

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

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

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

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

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

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

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

A11. “ITT Documentation” means this ITT and any information in any medium or form (including but not limited to Contract Notice, example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access by the Authority, for the purposes of responding to this ITT.

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

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

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

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

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

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

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

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

**Purpose**

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

a. timetable for the next stages of the procurement.

b. instructions, conditions and processes that governs this competition.

c. information you must include in your Tender and the required format.

d. arrangements for the receipt and evaluation of Tenders.

e. criteria and methodology for the evaluation of Tenders; and

f. Contract Terms & Conditions.

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

A22. This requirement was advertised in the Defence Sourcing Portal on 26/9/23 under the following reference FO1 - FTS

A23. This ITT is subject to the ‘Public Contract Regulations 2015 and is being procured under Regulation 28 (Restricted Procedure).

A24. This ITT has been issued to all potential Tenderers chosen during the supplier selection process under the Restricted Procedure

A25. Potential Tenderers can be found on the Contract Bidders Notice (Bidders means Tenderers) as advertised on the DSP.

A26. Funding has been approved for this requirement.

**ITT Documentation and ITT Material**

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

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

b. not copy or disclose the ITT Documentation or ITT Material to anyone other than the Tender team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT.

c. seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party.

d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A27.c, which as a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority.

e. accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority’s written approval may make you liable for a claim for breach of confidence and/or infringement of IPR, a remedy which may involve a claim for compensation.

f. inform the named Commercial Officer if you decide not to submit a Tender.

g. immediately confirm destruction of (or in the case of software, that it is beyond use) all ITT Documentation, ITT Material, and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and

h. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked ‘OFFICIAL-SENSITIVE’ or ‘SECRET’.

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

**Tender Expenses**

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

**Consortia and Sub-Contracting Arrangements**

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

**Material Change of Control**

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

a. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of your PQQ response or in connection with the submission of your PQQ response.

b. any material adverse change in your circumstances which may affect the truth, completeness or accuracy of any information provided as part of your PQQ response or in connection with the submission of your PQQ response or in your financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member; or

c. any material changes to your financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; and

d. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:

 i. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured.

 ii. the identity of Consortium Arrangement or Sub-Contracting Arrangement.

 iii. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and

any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.

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

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

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

a. They fail to re-submit to the Authority the updated relevant section of their PQQ response providing details of such change in accordance with paragraph A33 as soon as is reasonably practicable and in any event no later than 7 days following request from the Authority;

b. having notified the Authority of such change, the Authority considers that the effect of the change is such that on the basis of the evaluation undertaken by the Authority for the purpose of selecting potential Tenderers to participate in the procurement, the Tenderer would not have pre-qualified.

**Contract Terms & Conditions**

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

A36. Standardised Contract 1B (SC1B) conditions are attached.

**Other Information**

A37.**The Armed Forces Covenant**

a. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives, as a result of their service.

b. The Covenant is based on two principles:

i. That the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and

ii. That special consideration is appropriate in some cases, especially for those who have given most, such as the injured and the bereaved.

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

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

d. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the Authority can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

        Email address: employerrelations@rfca.mod.uk

        Address:         Defence Relationship Management

                        Ministry of Defence

                        Holderness House

                        51-61 Clifton Street

                        London

                        EC2A 4EY

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

A38**. Not Applicable**

**Section B – Key Tendering Activities**

|  |  |
| --- | --- |
| **Activity**  | **Accelerated Restricted Procedure Competition**  |
| Market Awareness Session | 21st Sep 2023 |
| Publish Contract Notice/DPQQ and ITT in Defence Sourcing Portal  | 9th Nov 2023 |
| Closing Date for Expressions of Interest (submission of PQQ responses) | 23rd Nov 2023 |
| Evaluate PQQ responses  | 30th Nov 2023 |
| Compile Tender List and Issue ITT | 19th January 2024 |
| Closing date for Prospective Supplier’s Clarification Questions | 2nd February 2024 |
| Final Date for Authority to answer clarification questions | 9th Feb 2024 |
| Tender Return Date | 23:59 on 16th Feb 2024 |
| Evaluation Completed and Issue Standstill Letters to Successful and Unsuccessful Tenderers. | 1st Mar 2024 |
| Issue Contract for signature to Successful Tenderer | 15th Mar 2024 |
| Contract Commencement (contract signed by both parties) | No Later Than 22nd Mar 2024 |
| Catterick - Full Operational Commencement | 12th April 2024 |
| Tidworth – Full Operational Commencement | 26th April 2024 |

**Notes**

**Tenderers Conference**

B1. A Tenderers Conference is not being held.

**Clarification Questions**

B2. All Clarifications must be and may only be submitted using the messaging functionality on the DSP. The Authority will automatically publish clarification questions and answers to all Tenderers, removing the name of the Tenderer that has raised the clarification question. If you wish the Authority to treat the clarification as confidential and not issue the response to all Tenderers, you must state this when submitting the clarification question and provide justification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Tenderer, who will have an opportunity to withdraw the question. If the clarification question is not withdrawn, the response will be issued to all Tenderers.

**Tender Return**

B3. The Authority may, in its own absolute discretion extend the deadline for receipt of tenders and in such circumstances the Authority will notify all Tenderers of any change.

**Negotiations**

B4. Negotiations do not apply to this tender process.

**Section C - Instructions on Preparing Tenders**

**Construction of Tenders**

C1. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP ex VAT. A full price breakdown must be included in the Tender.

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

**Validity**

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

**Section D - Tender Evaluation**

D1. Annex A to Section D details how your Tender will be evaluated, the methodology used to evaluate the Tender and the evaluation criteria.

D2. Negotiations do not apply to this tender process

**Section D (Annex A)**

**Evaluation of Tenders**

D3. On receipt of Tenders, the Authority shall evaluate each individual Tender as follows:

* The commercial evaluation is undertaken first by representatives of DEF Comrcl – HO BP3-1. This is processed by checking all Tenders are submitted as per the instructions in this ITT. Only Tenders passing this stage proceed to the technical evaluation stage.
* The Technical Evaluation will be undertaken by representatives from MOD. Only Tenders that are commercially and technically compliant will qualify for the financial evaluation. The Authority reserves the right to disqualify any Tenderer that has submitted a non-compliant bid.
* The Financial Evaluation will also be undertaken by representatives of DEF Comrcl – HO BP3-1. The evaluation is taken by dividing the technical score by the Tender price in accordance with the weightings and formula below.
* The Authority, its sole discretion, may disqualify a Tenderer in the event that it does not PASS any PASS/FAIL questions.

D4. The evaluation will weight the non-cost criteria and cost criteria at 60/40 respectively. The formula is shown at the bottom of this page



Where: wQ = weighting of non-cost criteria (in this case 60%)

 wC = weighting applied to cost (in this case 40%)

**Evaluation – Technical Questions**

|  |  |  |
| --- | --- | --- |
|  | **Technical Questions**  | **% Weightings** |
| 1 | Outline the resources you will deploy to manage and deliver this requirement. Describe organisational and team structure including key roles and responsibilities which are best suited to deliver the each of the service requirements as described in Statement of Requirement (SOR). Explain what input can be expected and at what level of expertise for each of the service strands.Provide 3 brief CVs/summary of the three most senior members of the senior management team for each proposed member of your senior management team as supporting evidence. (500 words) | 15% |
| 2 | Please confirm your acceptance in principle to the attached Contract Management Plan template. Insert names of your key representatives (as proposed by you) where highlighted in the Contract Management Plan. If you have any proposed amendments please propose them by amending the Contract Management Plan in TRACKED Word Format and please attach your amended Contract Management Plan as your response to this question. | PASS/FAIL |
| 3 | Please confirm how you will implement the mobilisation process, including TUPE management, in order to be ready to commence Full Operational Capability for each Personnel Recovery Centre from a) Catterick – 12th April 2024 and 26th April 2024 for Tidworth. Your response should include a timed Implementation Plan. (500 Words).  | 10% |
| 4 | Management and Delivery of Service as described in Statement of Requirement (SOR). Explain what input can be expected and at what level of expertise for each of the service strands.Your answer should include at a minimum the following aspects:Describe how you will deliver services face to face as described in the SOR including:Describe how the training will be provided for the Resident Support Team (“RST”) which should include, first aid training, fire marshalling, risk management. How will the competency/ qualifications be maintained throughout the life of the contract? How will staff leave and sickness be covered throughout the life of the contract? What activities will be delivered by the RST in the evening to the personnel on Recovery Duty” (“PRD”) between the hours of 1900 – 2130.Confirm what uniform motif will be displayed on the uniform/ clothing issued to the RST staff.What management process will be used to manage RST staff on site at the PRCs.Describe how you will maintain the RST DBS security clearances. Describe how Personnel Development for RST members will be delivered, such as Food Hygiene, Mental Health courses etc. (3000 Words) | 35% |
| 5 | Describe how you will meet the requirement for MI reporting. Provide details on how you will deliver regular and reliable MI on the service performance and a rolling cost report. (500 words) | 5% |
| 6 | Please state how you will monitor and drive good performance against the contract KPI's and how poor performance will be remedied. (750 Words)**KPI 1: Correct staffing levels by appropriately trained and qualified staff.**This means no failures, which requires 100% staffing all days of the year with the exception of a 2 week closure during the Christmas periodsMaintenance of training and competency of all training/ qualification, including DBS security clearances. Competent in the management of Health & Safety, including record keeping. Attendance for onsite emergency **KPI 2: Maintenance of accurate record keeping:**Includes full completion of logbooks, Personal Emergency Evacuation Plan (“PEEPs”), reports and returns.Managing the safety of the PRDs including recording of all incidents. Security of the building, in conjunction with the guard force. The RST conduct rounds as part of their duties. If there are any security issues they work with the guard force to ensure the security of the building. Any incidents are recorded Fault report of building faults. Needs to be recorded appropriately and the RST also informs the Centre Site Manager (“CSM “)on the handover briefing that takes place each morning. Nightly social activities – participation of PRD in activities/ programme of activities. The RST will inform the CSM on the evening handover brief of what activities are planned. All activities will be recorded and briefed to the CSM on the morning brief, informing the CSM of the activities organised and any issues and whether the PRDs took part. The RST team are required to monitor issues and report them at the shift change meeting. | 10% |
| 7 | State how you will identify and mitigate risks in a maximum of 500 words on the relevant tab on the risk register template. Complete the risk register on the template provided describing key risks for: a) mobilisation; and, b) in life delivery.Attach your completed risk register as your response to this question.  | 5.3% |
| 8 | Provide your OUTLINE Exit Plan for the culmination of the new contract in accordance with Schedule 10 - Exit Strategy (500 words)  | 3% |
| **Social Value Questions**  |
|  |  |  |
| 9 | **Policy Theme 3:** Fighting Climate Change**Policy Outcome:** Effective stewardship of the environment**Model Award Criteria 4.2 (“MAC 4.2”):** Influence staff, suppliers, customers, and communities through the delivery of the contract to support environmental protection and improvement.**Standard Reporting Metric (“SRM”) selected by the Authority is:** Reduction in waste to landfill arising from the performance of the contract, measured in metric tonnes.Using a maximum of 4 sides of A4, describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and MAC 4.2. Please include in your response: * your ‘Method Statement’, stating how you will achieve this and how your commitment meets the Model Award Criteria, and;
* a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to:
* timed action plan
* use of the Standard Reporting Metric (“SRM”)
* tools/processes used to gather data
* reporting
* feedback and improvement
* transparency
* your proposed Key Performance Indicator/s (“KPI/s”) against the SRM.
 | 16.7% |

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| **Evaluation Criterion Scores:**  |
| Each individual criterion will be evaluated against the following scoring mechanism.  |
| 100 | Excellent | The Tenderer has provided a response:* that is highly comprehensive and unambiguous;
* that demonstrates an effective method of meeting all elements of the requirement and demonstrably exceeds it by offering additional value to the stated requirement; and,
* where the role of the requirement in the wider contract is clearly expressed and is integrated with other requirements and there is a clear and easy to use process for measuring and addressing good and poor performance effectively.
 |
| 70 | Good | The Tenderer has provided a response:* that is comprehensive and unambiguous;
* that demonstrates an effective method of meeting all elements of the requirement; and/or where the role of the requirement in the wider contract is clearly expressed and integrated with other requirements and there is a process for measuring and addressing good and poor performance.
 |
| 30 | Adequate | The Tenderer has provided a response:* with evidence that it can meet the majority of criteria; and,
* the proposed solution gives a good idea of how the Tenderer will meet the requirement; and,
* the examples demonstrate how the Tenderer would manage the requirement; and,
* Overall the proposed solution gives confidence that it can be delivered with little support from the Authority.
 |
| 10 | Concerns | The Tenderer has provided a response where: solution* the proposed solution is unlikely to meet the requirement; and/or,
* the examples and solution proposed have some significant gaps; and/or,
* it is clear that the solution is dependent on some significant support from the Authority.
 |
| 0 | Fail | The Tenderer:* has provided a limited or no response; and/or,
* the proposed solution includes very limited detail and is unclear with significant gaps; and/or,
* the solution is dependent on substantial support from the Authority.
 |

The maximum Technical Score is 100. Following completion of the evaluation, each Tenderer’s Technical Score is calculated by applying each question weighting to the question score. For example:

Question Weighting: 20%

Question Score: 70

Calculation: ((20%/100) X 70) = (0.2 X 70) = 14%

The Tenderer must return:

1. Completed Annex A to this ITT (one copy). Please upload to the DSP in the commercial envelope.

**Section E - Instructions on Submitting Tenders**

**Submission of your Tender**

E1. Your Tender and any ITT Documentation must be submitted electronically via the Defence Sourcing Portal (DSP) by **23:59hrs GMT** on 16th **February 2024**. The Authority reserves the right to reject any Tender received after the stated date and time.  Hard copy, paper or delivered digital Tenders (e.g. email, DVD) at OFFICIAL SENSITIVE classification are no longer required and will not be accepted as a compliant Tender by the Authority. Tenderers are required to submit an electronic online Tender response on the **DSP.**

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

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

E4. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please contact **XXX** if you have a requirement to submit documents above OFFICIAL SENSITIVE

E5. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the DSP. You must contact **XXX** to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority

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

**Lots**

E7. This requirement has not been split into lots.

**Variant Tenders**

E8. The Authority will not accept variant Tenders.

**Samples**

E9. Samples are not required.

**Section F - Conditions of Tendering**

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

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

a. vary the terms of this ITT in accordance with applicable law;

b. seek clarification or additional documents in respect of a Tenderer’s submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Such clarifications will be sent to Tenderers via the DSP messaging function and Tenderers are asked to respond to such requests promptly;

c. visit your site;

d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT.

e. disqualify any Tenderer that is guilty of misrepresentation in relation to their Tender, expression of interest, the dynamic PQQ or the tender process;

f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the PQQ response, see paragraphs A31 to A34;

g. withdraw this ITT at any time or choose not to award any Contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis;

h. re-issue this ITT on a single source basis, in the event that this procurement does not result in a ‘competitive process’ as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014;

i. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low;

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

**Conforming to the Law**

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

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

**Tender Rigging and Other Illegal Practices**

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

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

**Conflicts of Interest**

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

· devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance.

· enter into any agreement or arrangement with any other person as to the form or content of any other Tender or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender.

· enter into any agreement or arrangement with any other person or organisation that has the effect of prohibiting or excluding that person or organisation from submitting a Tender.

· canvass the Authority or any employees or agents of the Authority in relation to this procurement; or

· attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender.

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

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

a. the manner of operation and management.

b. roles and responsibilities.

c. standards for integrity and fair dealing.

d. levels of access to and protection of competitors’ sensitive information and Government Furnished Information.

e. confidentiality and/or non-disclosure agreements (e.g. DEFFORM 702);

f. the Authority’s rights of audit; and

g. physical and managerial separation.

F10. Tenderers are ultimately responsible for ensuring that no Conflicts of Interest exist between the Tenderer and their advisers, and the Authority and its advisers. Any Tenderer who fails to comply with the requirements described at paragraphs F7 to F10 (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) may be disqualified from the procurement at the discretion of the Authority.

**Government Furnished Assets**

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

**Standstill Period**

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

**Publicity Announcement**

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

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

**Sensitive Information**

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

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

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

**Reportable Requirements**

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

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

**Applicability Of TUPE**

F20. Your attention is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended and /or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, as amended from time to time. The Authority would be neither transferor nor transferee of the employees in the circumstances of any contract awarded as a result of this invitation and it is your responsibility to consider whether or not TUPE applies to this re-let and to tender accordingly. Notwithstanding this, you will wish to note that it is the Authority's view that TUPE is likely to be applicable if this Invitation to Tender results in a Contract being placed, although the Authority shall not be liable for the opinion expressed above. In these circumstances the Authority will wish to satisfy itself that your proposals are responsibly based and take full account of your likely TUPE obligations.

F21. If you have a contrary view to that of the Authority on the applicability of TUPE you are strongly encouraged to submit both a TUPE and non-TUPE tender, providing a full explanation to support your view. If the Authority is satisfied by your explanation, the non-TUPE tender will be considered, otherwise the tender conforming to the Authority's viewwill be considered.

**TUPE Information Provided For Tendering Purposes**

F22. Anonymised TUPE information in respect of the current employees under the current contract or contracts is provided at Annex B. Upon contract signature responsibility for compliance with TUPE and management of TUPE transfer including provision of personal identifiable TUPE data will sit with the outgoing and incoming supplier.

F23. The information detailed at Annex B has been obtained from the incumbent contractor. The accuracy and completeness of this information cannot be warranted by the Authority. It remains your responsibility to ensure that your tender takes full account of all the relevant circumstances of this contract re-let and tender accordingly. You are required to confirm when responding that you will not make any claim or demand or take any actions or proceedings against the Authority (nor seek to avoid any contract or seek any amendment to a contract placed with the contractor by the Authority) arising from or relating to the provision of the information, whether or not you are awarded a contract as a result of this Invitation to Tender. Failure to provide clear and unequivocal confirmation may result in your tender being deemed non-compliant.

**DEFFORM 47 Annex A**

**(Edn06/23)**

**Ministry of Defence**

Tender Submission Document (Offer) – Ref Number [ITT -708374450

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

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

|  |
| --- |
| **Applicable Law**  |
| I agree that any Contract resulting from this competition shall be subject to English Law | Yes / No |
| **Total Value of Tender (excluding VAT)** |
| £ ………………………………………………………………………………………………AMOUNT IN WORDS ................................................................................................................................................ |
| **UK Value Added Tax** |
| If registered for Value Added Tax purposes, insert:a.        VAT Registration No ..........................................b.        Total amount of Value Added Tax payable on this Tender (at current rate(s)) £........................... |
| **Locations of work (town / city) where Contract will be performed by Prime:**  |
| Where any of the services offered in your Tender are not supplied or provided directly by you but by your proposed subcontractor/s, please provide details below including the location of town / city in which the subcontracted services are to be delivered (continue on another page if required) |
| Tier 1 Sub-Contractor Company Name | Town / city of Performance | Sub-Contractor Deliverables | Estimated Value | SMEYes / No |
|  |  |  |  |  |
| **Mandatory Declarations** (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):  | **Tenderer’s Declaration** |
| Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, complete and attach DEFFORM 528. | Yes\* / No  |
| Have you completed and attached a DEFFORM 711 – Notification of Intellectual Property Rights (IPR) Restrictions? | Yes\*/No |
| Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract Terms & Conditions? | Yes\* / No / not applicable  |
| Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended?  | Yes / No / not applicable |
| Have you completed a Supplier Assurance Questionnaire on the Supplier Cyber Protection Service? *[not applicable for this tender]* | ~~Yes\* / No /~~ N/A |
| Have you completed Form 1686 for Sub-Contracts? | Yes\* / No |
| Have you completed the compliance matrix / matrices? | Yes / No / N/A |
| Are you a Small Medium Sized Enterprise (SME)? | Yes / No |
| Have you and your Sub-Contractors registered with the Prompt Payment Code with regards to SMEs?  | Yes / No |
| Have you completed and attached Tenderer’s Sensitive Information form? | Yes\* / No |
| If you have not previously submitted a Statement Relating to Good (“SRG”)Standing within the last 12 months, or circumstances have changed have you attached a revised version? *[If you submitted the SRG with your PQQ and no circumstances have changed, respond N/A.]* | Yes\* / No / N/A  |
| Do the Contractor Deliverables, or any item provided in accordance with the Terms and Conditions of the Contract contain Asbestos, as defined by the control of Asbestos Regulations 2012? | Yes\* / No  |
| Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement?  | Yes\* / No /not applicable  |
| Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly | Yes\* / No  |
| Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer?  | Yes / No / Not Required |
| Have you complied with the requirements of the Defence Safety Authority Regulatory Articles?  | Yes / No / Not Required |
| Have you completed all Mandatory Requirements (as per paragraph F18) stated in this ITT?  | Yes / No  |
| \*If selecting Yes to any of the above questions, attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer). |
| **Tenderer’s Declaration of Compliance with Competition Law** |
| We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:a. the offered price has not been divulged to any Third Party;b. no arrangement has been made with any Third Party that they should refrain from tendering;c. no arrangement with any Third Party has been made to the effect that we will refrain from tendering on a future occasion;d. no discussion with any Third Party has taken place concerning the details of either’s proposed price; ande. no arrangement has been made with any Third Party otherwise to limit genuine competition.We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.We agree that the Authority may share the Contractor’s information/documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government tender processes, including value for money and related purposes. We certify that we have identified any Sensitive Information in the Tenderer’s Sensitive Information form (DEFFORM 539A). |
| **Dated this.................. day of ................................................................... Year ........................** |
| **Signature:**                                 **In the capacity of**         (Must be scanned original)                                (State official position e.g. Director,  Manager, Company Secretary etc.) |
| **Name:** (in BLOCK CAPITALS)**duly authorised to sign this Tender for and on behalf of:**(Tenderer's Registered Company Name) | **Postal Address:****Telephone No:****Registered Company Number:****Dunn And Bradstreet number:** |

**Appendix 1 to Annex A (Offer)**

**Appendix 1 to DEFFORM 47 Annex A (Offer)Edn06/23**

**Information on Mandatory Declarations**

**IPR Restrictions**

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

2. In particular, you must identify:

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

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

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

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

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

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

**Notification of Foreign Export Control Restrictions**

5. If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.

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

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

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

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

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

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

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

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

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

**Import Duty**

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

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

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

**Cyber Risk**

14. Cyber risk has been considered and a Cyber Security Model resulted in a ‘Not Applicable’ outcome.

**Sub-Contracts Form 1686**

15. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. Form 1686 and further guidance can be found in the Cabinet Office’s Contractual Process. **Please note that no Sub-Contracting to Suppliers outside the UK is permitted. (Other than Data Offshoring).**

**Small and Medium Enterprises**

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

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

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

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

**Transparency, Freedom Information and Environmental Information Regulations**

20. The Authority shall publish notification of the Contract and publish Contract documents where required following a request under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person or might prejudice fair competition between suppliers.

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

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

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

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

**Electronic Purchasing**

25. Tenderers must note that use of the Contracting, Purchasing and Finance (CP&F) electronic procurement tool is a mandatory requirement for any resultant Contract awarded following this Tender. By submitting this Tender, you agree to electronic payment. You may consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant and excluded from the tender process.

**Change of Circumstances**

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

**Asbestos, Hazardous Items and Depletion of the Ozone Layer**

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

**Defence Safety Authority (DSA) Requirements**

28. There are no DSA Requirements.

**Bank or Parent Company Guarantee**

29. A Bank or Parent Company Guarantee is not required.

**Defform 47 – Annex B TUPE Data**

**XXX**

**Statement of Requirement – Schedule 1**

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| --- |
| **Introduction****Purpose**This SOR sets out the requirements for the Resident Support Teams (RST) for Phoenix House Personnel Recovery Centre (PRC) Catterick, and Tedworth House Personnel Recovery Centre, Tidworth. Both are part of the Tri Service Recovery Capability, providing recovery courses and vocational activities for Tri Service Personnel on Recovery Duties (PRDs) Service Personnel (SP).  |
| **Background**The PRC is designed to accelerate the return to duty or smoothest transition to an appropriately skilled and supported civilian life for military service personnel who are wounded, injured, or long-term sick Service Personnel irrespective of cause within a structured setting.The primary purpose of the PRC is to provide a conducive military environment for serving wounded, injured or sick members of the Armed Forces to use for recovery courses and vocational activities in support of their individual recovery plan, as directed by their chain of command, the aim of which is to return to duty or transition to an appropriately skilled civilian life. Phoenix House PRC Catterick has been in place since 2013. Tedworth House PRC has been in place since 2011.  |
| **Objectives**The Residential Support Team (RST) are civilian members of staff who maintain a presence within the Personnel Recovery Centre (PRC) outside of working hours and over weekends. They also assist in the course arrivals and orientation, and completion of the Personal Emergency Evacuation Plan (PEEPs) for each student on Mondays. **PRIMARY ROLE**The primary role within the PRC is to assist the Military Guard Service (“MGS”) with the co-ordination of emergency and security procedures of all residents and property and provide first line support to residential PRD. The aim is to ensure personnel are safe, to deal with any emergencies within the PRC, (including evacuation of the building), threats to life or self-harm incidents. The RST will conduct hourly rounds of the PRCs until 23:59, recommencing at 05:30 (silent hours) in order to maintain security and to minimise the risk of fire. From 07:00 the RST will staff the reception until the Front of House team take over at 08:00. The service standards shall comprise the provision of an RST service during the following periods:1. 08:30 – 16:00 Monday **(CATTERICK ONLY)**
2. 16:00 – 08:00 hours Monday to Thursday (Catterick & Tidworth)
3. 15:00 – 08:00 on Friday (Catterick & Tidworth)
4. All day Saturday and Sunday (08:00 Saturday through to 08:00 Monday) and up to 15 days for Bank Holidays, military grants or military staff exercises. (Catterick & Tidworth)
5. The service is not required during a 2 week Christmas break (Catterick & Tidworth) with exact dates to be specified by the Authority each year.

**SECONDARY ROLE** The RST are always to maintain a positive relationship with residents and visitors and be approachable. The RST are actively encouraged to talk to the residents during hourly rounds. The RST will be expected to assist in the smooth running of the building and will be asked to support events and activities during their shift. The RST will also assist in the course arrivals and orientation, and completion of the Personnel Evacuation Plan (PEPs) for each student on Mondays.**SKILLS, KNOWLEDGE and EXPERIENCE** All members of the RST must be:DBS cleared (Supplier Responsibility);hold a First Aid at Work Level 3 (supplier responsibility)hold a Defib certificate (training is given by the authority)must undertake formal Fire Marshal training (supplier responsibility). The RST must have empathy for Service Personnel on Recovery Duty and have an understanding of military terminology/ process, which will assist the RST members in their duties. The RST must be able to deal with emergencies and to follow incident guidelines (provided by authority), whilst remaining calm in difficult circumstances. The RST must also maintain accurate records and accounts whilst on duty and have the confidence to brief clearly.  |
| **Scope**PRC Catterick is located on the edge of Catterick Garrison, North Yorkshire and sits in the North East corner of Gaza Barracks. Tedworth House is located within Tidworth adjacent to the Barracks but outside of the security perimeter. This procurement seeks to ensure the continued provision of RSTs as described in the Statement of Requirement |
| **Requirements** **Personnel and Staffing** 1. The contractor is to provide a workforce that covers the following hours[[1]](#footnote-1):1. 08:30 – 16:00 Monday (Catterick Only)
2. 16:00 – 08:00 hours Monday to Thursday (Catterick & Tidworth)
3. 15:00 – 08:00 on Friday (Catterick & Tidworth)
4. All day Saturday and Sunday and up to 15 days for Bank Holidays, military grants or military staff exercises. (Catterick & Tidworth)

 2. The Contractor shall provide RSTs as a fully managed service. All RSTs must have DBS clearance and although they are PRD facing, their main priority is PRD SP safety, security, fire and H&S, POC for the Duty Officer in the event of a call out and to deal with out of hours enquiries. 3. All contractor staff will be required to support the PRC and to undertake support functions, including Fire Wardens duties in the event of a fire alarm, maintain First Aid qualifications, Evac Chair training, and be conversant with basic Health Safety regulations and must be willing to attend courses to maintain capability and qualifications as required.  **ROUTINE DUTIES FOR CATTERICK and TIDWORTH**4. The PRC Residential Support Team is to:1. Act as the first point of contact for Service Personnel (“SP”) during silent hours, providing a high level of support.
2. Liaise with Military personnel and provide feedback of any concerns relating to welfare, domestic and training support required for residents.
3. To liaise effectively with internal and external agencies in a crisis e.g. Military Duty Officer or the Emergency Services.
4. Listen to, talk with and generally engage with the residents to offer an independent ear when needed, and to provide care and support to the highest standard.
5. Liaise with other members of the welfare team as required and to have contact with resident’s family, friends and other professionals involved in their recovery, to ensure a healing experience and provide a platform for recovery.
6. Account for and be aware of the distribution of all keys during silent hours.
7. Ensure that the Residential Support Team’s mobile phone is charged, serviceable and ontheirperson for the duration of the duty.
8. Carry the Emergency Pull Cord Pager and deal with any call outs.
9. Complete the handover procedure, then familiarise yourself with any events taking place within the PRC.
10. Maintain accurate records and record all events in the RST logbook.
11. Check the contents of the Fire Pack and First Aid pack.
12. Assist any Service Personnel should their room alarm be activated.
13. Ensure that all visitors sign in/out of the Visitor’s Signing in sheet.
14. Carry out hourly security/fire patrols of the PRC building and compound, a further patrol as the Building Fire Safety Officer (“BFSO”) is to be carried out on the 00:00-08:00 **(CATTERICK ONLY).**
15. Turn off electrical items (TVs, music systems, game consoles, IT equipment, gym equipment) in the communal areas and gym once they are not in use.
16. Carry out a handover with the PRC Staff and maintain electronic databases and paper systems in accordance with procedures to ensure accuracy of information and efficiency.
17. If a SP is deemed to be at risk, the RST member may use the Access all Areas Card to enter the individual’s room in order to conduct a safety check - an "Actions On" guide can be found in the PRC Welfare Policy for The Management of At Risk Personnel.
18. All members of the RST will be DBS cleared, hold a First Aid at Work Level 3 and Defib certificate, must conducted formal Fire Marshal training, be conversant with basic Health & Safety, Evac Chair trained – additional training may be required should circumstances change within the PRC.
19. You will be expected to assist in the smooth running of the building and will be asked to support events and activities during your shift.
20. If a SP cannot be located, the RST is to conduct the following:

(1) Conduct a physical check of the SP room. This check is to consist of a “knock” on the door, listen, followed by entering into room if there is no response.(2) If the SP is still absent a wider check of the PRC and the grounds is to be conducted.(3) If the SP is still absent the Residential Support Team is to report the matter to the PRC Duty Officer.1. Allocate rooms to Service Personnel out of hours, ensuring a Personal Emergency Evacuation Plan (“PEEP”) is completed and they receive a formal tour of the building including emergency procedures.
2. Familiarise yourself with the PRC “Actions On” folder.

 **Weekly:**1. Report any building faults to the Centre Site Manager (“CSM”) of the PRC.
2. A visual check of the building and grounds for damage.

**OUT OF HOURS (OOH) ACTIONS**5**. Access to the PRC**. As the Residential Support Team, you will control access to the PRC during OOHs. Only permitted persons should be allowed access, this will include all members of the PRC staff, SP, authorised guests and those listed in the reception diary. You must always seek personal identification if unsure at any stage. If there is any doubt, you have the authority to deny access, however, the MGS are the first line of defence.6. **New arrivals to the PRC**. If a SP arrives requiring accommodation OOH, you are first to determine they are expected. You are to issue a key and a welcome pack, whilst competing a PEEPs. The welcome pack will be labelled with the resident’s name. If a SP arrives and he/ she is not listed or there is no welcome pack, you should contact the PRC Duty Officer before issuing a room to the SP. a. Once the room has been allocated, the SP needs to be made aware of the nearest fire exit and the evacuation procedure. Copies of this information can be found on the notice board within each accommodation room.**7. Dependants / Civilian Guests.** The authorisation of permitted guests will come from the PRC CSM or Duty Officer and will be recorded on the room booking system. The Residential Support Team should be made aware of any guest staying at the PRC on the daily/weekend handover brief. Current Army Policy on living-in personnel entertaining guest in barracks AGAI 53 (Aug 2018 edition) is attached to this ITT. The intention is to give residents/ guests as much freedom as possible but to remain consistent with security and operational cohesiveness.The following policy is to be adhered to: 1. Guests under the age of 18 **are not** permitted to enter the PRC. The Residential Support Team will refuse access to anyone who cannot produce valid identification, which clearly shows their date of birth. Children of residents are permitted access to the PRC, if prior authorisation has been granted.
2. Guests who appear to under the influence of alcohol will need to be monitored and RST staff must be prepared to deny access to the PRC.
3. Military personnel are responsible for their guests for the duration of the visit, and they are to ensure that the correct booking in/out procedure has been adhered to. Military personnel must escort their guests in and out of the building.

 1. Overnight stays (from 00:01 to 06:00) are not permitted without the permission of the PRC CSM or the PRC Duty Officer. Veterans are currently not permitted to enter the PRC.
2. In the event of the threat level being raised to the extent that the external gate is locked, all guests will have to gain authorisation from the reception to remain in the PRC.

8**. Departing Residents.** If SP are required to vacate a room during your duty period, you will be forewarned by the PRC CSM, Duty Officer or PRC reception. You should check the accommodation and make notes of any faults or damage and report them to the CSM at 08:00. |

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**MOD Terms and Conditions for Less**

**Complex Requirements**

**1 Definitions - In the Contract:**

**The Authority** means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown;

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

**Contract** means the agreement concluded between the Authority and the Contractor, including all terms and conditions, , specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2.c;

**Contractor** means the person, firm or company specified as such in the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be;

**Contractor Deliverables** means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule of requirements.

**Effective Date of Contract** means the date stated on the Contract or, if there is no such date stated, the date upon which both Parties have signed the Contract;

**Firm Price** means a price excluding Value Added Tax (VAT) which is not subject to variation;

**Government Furnished Assets (GFA)** is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;

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

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

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

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

**Parties** means the Contractor and the Authority, and Party shall be construed accordingly;

**Sensitive Information** means the information listed as such in Schedule 4, being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

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

**2 General**

a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.

b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.

c. If there is any inconsistency between these terms and conditions and the associated documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:

(1) the terms and conditions;

(2) the schedules; and

(3) the documents expressly referred to in the agreement.

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

e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights or remedies. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.

g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

**3 Application of Conditions**

a. These terms and conditions, schedules and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.

b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

**4 Disclosure of Information**

Information received or in connection with the Contract shall be managed in accordance with DEFCON 531 (SC1) and Clause 5.

**5 Transparency**

a. Notwithstanding any other condition of this Contract, including 531 (SC1), the Contractor understands that the Authority may publish the Transparency Information to the general public.

b. Subject to Clause 5.c, the Authority shall publish and maintain an up-to-date version of the Transparency 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 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 in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency 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.

c. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information, in accordance with the principles set out above. 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 FOIA and/or the EIR, for the avoidance of doubt, including the Sensitive Information.

(2) taking into account the Sensitive Information set out in Schedule 4, 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.

**6 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 the Contract;

(4) marked with the number of the Contract; and

(5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the Contract, 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.

**7 Intellectual Property**

a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.

b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim.

c. 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

d. Where any of the Conditions listed below (1 to 3) have been added to these Conditions of the Contract as Project Specific DEFCONs at Clause 20, 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 5 (Notification of Intellectual Property Rights (IPR) Restrictions):

(1) DEFCON 15 - including notification of any self-standing background Intellectual Property;

(2) DEFCON 90 - including copyright material supplied under clause 5;

(3) DEFCON 91 - limitations of Deliverable Software under clause 3b;

e. 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 5.

f. Any amendment to Schedule 5 shall be made in accordance with DEFCON 503 (SC1).

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

a. This Contract comes into effect on the Effective Date of Contract.

b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm or Fixed Price stated in the Contract.

c. The Contractor shall ensure that the Contractor Deliverables:

(1) correspond with the specification;

(2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor’s skill and judgement; and

(3) comply with any applicable Quality Assurance Requirements specified in the Contract.

d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

**9 Supply of Data for Hazardous Contractor Deliverables**

a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 9. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Contract.:

(1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;

(2) the International Maritime Dangerous Goods (IMDG) Code;

(3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and

(4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

b. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

c. As soon as possible and in any event within the period specified in the Contract (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority’s representatives in the manner and format prescribed in the Contract:

(1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and

(2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at Clause 9.d, which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

d. Safety Data Sheets if required under Clause 9.c shall be provided in accordance with the extant UK REACH Regulation and any additional information required by the Health and Safety at Work etc. Act 1974 and shall contain:

(1) information required by the Classification, Labelling and Packaging (GB CLP) Regulation or any replacement thereof; and

(2) where the Hazardous Contractor Deliverable is, contains or embodies a radioactive substance as defined in the extant Ionising Radiation Regulations, details of the activity, substance and form (including any isotope); and

(3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed.

e. The Contractor shall retain its own copies of the Safety Data Sheets provided to the Authority in accordance with Clause 9.d for 4 years after the end of the Contract and shall make them available to the Authority’s representatives on request.

f. Nothing in this Clause 9 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

g. 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.

**10 Delivery / Collection**

a. The Contract 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. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.

c. The Authority shall be deemed to have accepted the Contractor Deliverables within a reasonable time after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

**11 Marking of Contractor Deliverables**

a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Contract, or 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 the 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 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

**12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)**

The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the Contract and Def Stan 81-041 (Part 1 and Part 6).

**13 Progress Monitoring, Meetings and Reports**

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the Contract and shall ensure that its Contractor’s representatives are suitably qualified to attend such meetings. Any additional meetings reasonably required shall be at no cost to the Authority.

**14 Payment**

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 14b 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 14a, 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 14b 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 14c after a reasonable time has passed.

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

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

**15 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 15.a the dispute shall be referred to arbitration and 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 it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

**16 Termination for Corrupt Gifts**

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (or anyone acting on its behalf or any of its or their employees):

(1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

(2) commits or has committed any prohibited act or 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;

(3) has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

b. In exercising its rights or remedies to terminate the Contract under Clause 16.a. 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 committing the prohibited act;

(2) give 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 its or their behalf;

(b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee; and

c. Where the Contract has been terminated under Clause 16.a.the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

**17 Material Breach**

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract. Where the Authority has terminated the Contract under Clause 17 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.

**18 Insolvency**

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

**19 Limitation of Contractor’s Liability**

a. Subject to Clause 19.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £2,000,000

b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:

(1) for:

a. any liquidated damages (to the extent expressly provided for under this Contract);

b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor’s failure to perform or underperform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under this Contract);

c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;

d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;

(2) under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the contract;

(3) for death or personal injury caused by the Contractor’s negligence or the negligence of any of its personnel, agents, consultants or

sub-contractors;

(4) For fraud, fraudulent misrepresentation, wilful misconduct or negligence;

(5) in relation to the termination of this Contract on the basis of abandonment by the Contractor;

(6) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or

(7) for any other liability which cannot be limited or excluded under general (including statute and common) law.

c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

d. Please see Annex A for further information

**20 The project specific DEFCONs and DEFCON SC variants that apply to this Contract are:**

DEFCON 76 Contractor’s Personnel at Government Establishments

DEFCON 503 Formal Amendments to the Contract

DEFCON 531 Disclosure of Information

DEFCON 532 B Protection of Personal Data (where Personal Data is not being
 processed on behalf of the Authority)

DEFCON 538 Severability

DEFCON 540 Conflicts of Interest

DEFCON 566 Change of Control of Contractor

DEFCON 602B Quality Assurance (Without Deliverable Quality Plan)

DEFCON 609 Contractor’s Records

DEFCON 611 Issued Property

DEFCON 660 Official-Sensitive Security Requirements

21 The special conditions that apply to this Contract are:

* 1. Notice Period for the Authority for termination for convenience will be 3 months.

**Schedule 3 – Schedule of Requirements**

Detailed in pricing schedule in DSP documents for suppliers – Max Contract Spend is:

The Estimated Value for the full 7 years of the prospective contract if £2.8million over 7 years. Price bids exceeding £2million Ex VAT for the Initial Term of 5 years shall be considered non-compliant and the tender may be disqualified

The pricing template contains an *estimated* forecast of 2% per annum for the purpose of the tender only. However, actual prices will be determined by Variation of Price formulas on the indigo system, using the indices HQTJ as detailed on the Pricing template.

**Schedule 5 - Contract Data Sheet**

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| --- | --- |
| **Contract Period** | Effective Date of Contract: [ *to be confirmed* ] 2024The Contract expiry date shall be: 31st March 2029 |
| **Clause 6 - Notices** | Notices served under the Contract can be transmitted by electronic mail:Yes [x] No [ ] Notices served under the Contract shall be sent to the following address:Authority: Room 2.1.02, Kentigern House, 65 Brown Street, Glasgow G2 8EXContractor: |
| **Clause 8 Supply of Contractor Deliverables and Quality Assurance** | Is a Deliverable Quality Plan required for this Contract? Yes [ ] No [x] If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within       Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.**Other Quality Assurance Requirements:** |
| **Clause 9 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances**  | A completed SC3 Core Plus Schedule “Hazardous Articles, Materials or Substance Statement”, and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:a) The Authority’s Representative (Commercial)1. b) DSA-Land-MovTpt-DGHSIS@mod.uk

or if only a hardcopy is available to:a) The Authority’s Representative (Commercial)b) Hazardous Stores Information System (HSIS)Defence Safety Authority (DSA)Movement Transport Safety Regulator (MTSR)Hazel Building Level 1, #H019MOD Abbey Wood (North)Bristol, BS34 8QWDSA-DLSR-MovTpt-DG HSIS (MULTIUSER)to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date:  |
| **Clause 10 –** **Delivery/Collection** | If applicable, Contract Deliverables are to be:Delivered by the Contractor [ ] Special Instructions: Collected by the Authority [ ] Special Instructions (including consignor address if different from Contractor’s registered address): |
| **Clause 12 - Packaging and** **Labelling of Contractor** **Deliverables** | Additional packaging requirements: |
| **Clause 13 - Progress Monitoring** | The Contractor shall be required to attend the following meetings:Type: Contract Governance MeetingsFrequency: MonthlyLocation: Microsoft Teams |

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| --- |
| **DEFFORM 111****(Edn 10/22)****Appendix - Addresses and Other Information** |
|  | **1. Commercial Officer**Name: **XXX**Address: Kentigern House, 65 Brown St, Glasgow, G2 8EXEmail: **XXX**         |  | **8. Public Accounting Authority**1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  44 (0) 161 233 53972. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  44 (0) 161 233 5394 |  |
|  |
|  | **2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)Name: **XXX**Address Montgomery House, Queen's Avenue, ALDERSHOT, Hants, GU11 2JNEmail: **XXX**  |  | **9. Consignment Instructions**The items are to be consigned as follows:N/A |  |
|  |
|  | **3. Packaging Design Authority**Organisation & point of contact:N/A(Where no address is shown please contact the Project Team in Box 2)        |  | **10. Transport.** The appropriate Ministry of Defence Transport Offices are:**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH Air Freight CentreIMPORTS  030 679 81113 / 81114 Fax 0117 913 8943EXPORTS  030 679 81113 / 81114 Fax 0117 913 8943Surface Freight CentreIMPORTS  030 679 81129 / 81133 / 81138 Fax 0117 913 8946EXPORTS  030 679 81129 / 81133 / 81138 Fax 0117 913 8946 |  |
|  |  |
|  | **4. Centre managers:** **Catterick****Name: XXX****e-mail: XXX****Tidworth****Name: XXX****e-mail: XXX** |  | **B.** **JSCS**JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)JSCS Fax No. 01869 256837Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk in the first instance. |  |
|  |
|  | **5. Drawings/Specifications are available from**N/A |  | **11. The Invoice Paying Authority**Ministry of Defence  0151-242-2000DBS FinanceWalker House, Exchange Flags Fax: 0151-242-2809Liverpool, L2 3YL **Website is:** <https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement> |  |
|  |
|  | **6. Intentionally Blank** |  | **12. Forms and Documentation are available through \*:**Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C SiteLower ArncottBicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)**Applications via fax or email:** Leidos-FormsPublications@teamleidos.mod.uk |  |
|  |
|  | 1. **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 6 - Contractor’s Sensitive Information (i.a.w. Clause 5) for Contract No:**

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 publication of any information.

|  |
| --- |
| Contract No: 710230450 |
| Description of Contractor’s Sensitive Information: |
| Cross Reference(s) to location of Sensitive Information: |
| Explanation of Sensitivity: |
| Details of potential harm resulting from disclosure: |
| Period of Confidence (if applicable): |
| Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: Email Address: |

**Schedule 7 – Notification of Intellectual Property Rights (IPR) Restrictions (i.a.w. Clause 7) for Contract No. PART A – Notification of IPR Restrictions**

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

**Schedule 8 - Specimen Limitation of Contractor’s Liability Clause**

**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 Contact, including but not limited to:

1.3.1.1 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);

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

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

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

1.3.2.2 the Authority’s indemnity in relation to TUPE under Schedule [(TUPE)];

1.3.3 breach by the Contractor of [the Commercial Officer to include as appropriate [DEFCON 532 B] 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 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 Clause 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 (£1,000,000) in aggregate;

1.4.1.2 in respect of DEFCON 514 (£1,000,000) in aggregate;

1.4.1.3 in respect of DEFCON 611 (£1.000.000) in aggregate; and

1.4.1.4 in respect of DEFCON 612 (£1,000,000) in aggregate;

1.4.2 without limiting Clause 1.4.1 and subject always to Clauses 1.2, 1.3 and 1.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [£ pounds] (£1,000,000) in aggregate;

1.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 1.4.1 and 1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 1.4.1 and 1.4.2 of this Contract.

1.5 Subject to Clauses 1.2, 1.3 and 1.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

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

**Consequential loss**

1.7 Subject to Clauses 1.2, 1.3 and 1.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

1.7.1 indirect loss or damage;

1.7.2 special loss or damage;

1.7.3 consequential loss or damage;

1.7.4 loss of profits (whether direct or indirect);

1.7.5 loss of turnover (whether direct or indirect);

1.7.6 loss of business opportunities (whether direct or indirect); or 1

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 DEFCON 76 and 611;

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 632 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.

schedule 9

Exit Management

1. DEFINITIONS
	1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| 1. **Emergency Exit**
 | 1. any termination of this Contract which is a:
	1. termination of the whole or part of this Contract in accordance with SC1B except where the period of notice given under that Clause is greater than or equal to six (6) months;
	2. termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to SC1B wrongful termination or repudiation of this Contract by either Party;
 |
| 1. **Exclusive Assets**
 | 1. those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
 |
| 1. **Exit Information**
 | 1. has the meaning given in Paragraph 3.1;
 |
| 1. **Exit Manager**
 | 1. the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
 |
| 1. **Net Book Value**
 | 1. the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Contract;
 |
| 1. **Non-Exclusive Assets**
 | 1. those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
 |
| 1. **Ordinary Exit**
 | 1. any termination of the whole or any part of this Contract which occurs:
	1. pursuant to SC1B where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to six (6) months; or
	2. as a result of the expiry of the Initial Term or any Extension Period;
 |
| 1. **Transferable Assets**
 | 1. those of the Exclusive Assets which are capable of legal transfer to the Authority;
 |
| 1. **Transferable Contracts**
 | 1. the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
 |
| 1. **Transferring Contracts**
 | 1. has the meaning given in Paragraph 7.2(b).
 |

1. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT
	1. During the Term, the Supplier shall:
		1. create and maintain a register of all:
			1. Assets and GFA, detailing their:
				1. make, model, designation, asset number and serial number;
				2. ownership and status as either Exclusive Assets or Non-Exclusive Assets;
				3. Net Book Value;
				4. condition and physical location; and
				5. use (including technical specifications); and
			2. software;
			3. Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
		2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
		3. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
		4. at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
	2. The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.
	3. Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.
2. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES
	1. On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
		1. details of the Service(s);
		2. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
		3. an inventory of Authority Data in the Supplier's possession or control;
		4. technical and functional specification (subject to licencing) required to carry out this Contract;
		5. source codes for materials used for the purposes of carrying out this Contract;
		6. details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
		7. a list of on-going and/or threatened disputes in relation to the provision of the Services;
		8. to the extent permitted by applicable Law, all information relating to Subsequent Transferring Employees required to be provided by the Supplier under this Contract; and
		9. such other material and information as the Authority shall reasonably require for the continued operation of the CTP website and/or any part of the digital solution,

(together, the "**Exit Information**").

* 1. The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 3.2 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-contractors’ prices or costs).
	2. The Supplier shall:
		1. notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
		2. provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
	3. The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.
	4. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
		1. prepare an informed offer for those Services; and
		2. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
1. OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES
	1. The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
	2. If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. The Supplier’s costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.
2. EXIT PLAN
	1. The Supplier shall, within three (3) months after the Effective Date, deliver to the Authority an Exit Plan which:
		1. sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
		2. complies with the requirements set out in paragraph 5.3; and
		3. is otherwise reasonably satisfactory to the Authority.
	2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
	3. The Exit Plan shall set out, as a minimum:
		1. how the Exit Information is obtained;
		2. separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
		3. a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
		4. the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
		5. the management structure to be employed during the Termination Assistance Period;
		6. a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
		7. how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the following:
			1. processes;
			2. documentation;
			3. data transfer which is to be presented in a reasonable format. The data is not to be compromised during the exit process. The method of data transfer is subject to approval by the Authority;
			4. systems migration. The method of systems migrations is subject to approval by the Authority;
			5. security; and
			6. the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
		8. any work in progress in connection with the Services;
		9. a timetable for transferring the Services to any Replacement Supplier(s);
		10. the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
		11. a timetable and critical issues for providing the Termination Services;
		12. any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
		13. how the Termination Services would be provided (if required) during the Termination Assistance Period;
		14. procedures to deal with requests made by the Authority and/or a Replacement Supplier for staffing information pursuant to Schedule 28 (Staff Transfer); and
		15. how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
	4. The Supplier shall ensure that there is no adverse impact on customer experience and in particular on Service Personnel or discharged Service Personnel in relation to the provision of the Services during the exit process.
	5. The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
	6. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

**Finalisation of the Exit Plan**

* 1. Within 20 Working Days after service of a Termination Notice by either Party or no later than six (6) months prior to the expiry of this Contract, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
	2. The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).
1. TERMINATION SERVICES

**Notification of Requirements for Termination Services**

* 1. The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
		1. the date from which Termination Services are required;
		2. the nature of the Termination Services required; and
		3. the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the expiry of the Initial Term or any Extension Period or earlier termination of this Contract.
	2. The Authority shall have:
		1. an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance Period beyond the date which is 30 months after expiry of the Initial Term or any Extension Period or earlier termination of this Contract and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
		2. the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

**Termination Assistance Period**

* 1. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
		1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
		2. in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
		3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;
		4. provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
		5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
	2. Without prejudice to the Supplier’s obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
	3. If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

**Termination Obligations**

* 1. The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
	2. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
		1. cease to use the Authority Data;
		2. provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
		3. erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
		4. return to the Authority such of the following as is in the Supplier's possession or control:
			1. all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Contract;
			2. all materials created by the Supplier under this Contract in which the IPRs are owned by the Authority;
			3. any parts of the IT Environment and any other equipment which belongs to the Authority; and
			4. any items that have been on-charged to the Authority, such as consumables;
		5. vacate any Authority Premises unless access is required to continue to deliver the Services;
		6. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
			1. such information relating to the Services as remains in the possession or control of the Supplier; and
			2. such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).
	3. Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
	4. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.
1. ASSETS, SUB-CONTRACTS AND SOFTWARE
	1. Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:
		1. terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
		2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
		3. terminate, enter into or vary any licence for software in connection with the Services.
	2. Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out:
		1. which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
			1. which, if any, of:
				1. the Exclusive Assets that are not Transferable Assets; and
				2. the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

* + 1. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services. Where requested by the Supplier, the Authority and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

* 1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
		1. a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
		2. the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
	2. Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
	3. Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
		1. procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
		2. procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
	4. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
	5. The Authority shall:
		1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
		2. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
	6. The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
	7. The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
		1. in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
		2. in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier’s failure to comply with Intellectual Property Rights
1. SUPPLIER PERSONNEL
	1. The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Staff Transfer shall apply.
	2. The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
	3. During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
	4. The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the staffing information, regardless of when such notice takes effect.
	5. The Supplier shall not for a period of 12 months from the date of transfer re-employ or re‑engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.
2. CHARGES
	1. During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
	2. Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
		1. where more than six (6) months’ notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
		2. where less than six (6) months’ notice is provided, no more than [1.2 ] times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
	3. For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
	4. Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.
3. APPORTIONMENTS
	1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
		1. the amounts shall be annualised and divided by 365 to reach a daily rate;
		2. the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
		3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
	2. Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

ANNEX 1

Scope of the Termination Services

* 1. The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
		1. ceasing all non-critical Software changes (except where agreed in writing with the Authority);
		2. notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
		3. providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
		4. delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
		5. providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
		6. with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
		7. providing the Authority with any problem logs which have not previously been provided to the Authority;
		8. providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
		9. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
		10. agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
		11. reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
		12. providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
		13. provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
		14. making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
		15. assisting in establishing naming conventions for any new production site;
		16. analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
		17. generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by the Authority;
		18. agreeing with the Authority a handover plan for all of the Supplier’s responsibilities as set out in the Security Management Plan;
		19. delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
		20. assisting with the loading, testing and implementation of the production databases;
		21. assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
		22. in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous [insert time period];
		23. assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
		24. providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
		25. answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
		26. agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
		27. providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
			1. to information and documentation relating to the transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
			2. following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
		28. knowledge transfer services, including:
			1. transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
			2. providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
			3. providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
			4. allowing the Authority and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with such knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

* 1. The Supplier shall:
		1. provide a documented plan relating to the training matters referred to in Paragraph 1.1(n) for agreement by the Authority at the time of termination or expiry of this Contract;
		2. co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(r), providing skills and expertise of a suitable standard; and
		3. fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 1.1(z), providing skills and expertise of a reasonably acceptable standard.
	2. To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
	3. The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(aa) shall include:
		1. copies of up-to-date procedures and operations manuals;
		2. product information;
		3. agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
		4. key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
		5. information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
		6. details of physical and logical security processes and tools which will be available to the Authority; and
		7. any relevant interface information.

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

* 1. During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
		1. any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
			1. sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
			2. during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
		2. the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

**Schedule [10]**

**TRANSFER REGULATIONS**

**PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY**

1. **DEFINITIONS**
	1. In this Schedule [10] Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.
	2. Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 10 Part 1 unless the context otherwise requires:

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

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

(ii) the Data Protection Act 2018;

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

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

"**Employing Sub-Contractor**" means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of a Previous Contractor Employee;

"**New Provider**" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"**Previous Contractor**" means;the incumbent

"**Previous Contractor Employee**" means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"**Relevant Transfer**" means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"**Relevant Transfer Date**" means the date on which a Relevant Transfer is effected for Previous ContractorEmployees;

"**Relevant Statutory Scheme**" has the same meaning as in Regulation 8 of the Transfer Regulations;

“**Services**”shall have the meaning specified in [project team to complete];

“**Transfer Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

1. **PREVIOUS CONTRACTOR employeeS**
	1. **Employee Information**
		1. No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule [X] Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
		2. The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
		3. The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
		4. Paragraph 2.1.1 is subject to the Authority and any Previous Contractor’s obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.
		5. The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.
	2. **Obligations in respect of Previous Contractor Employees**
		1. The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
		2. The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
		3. The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
		4. Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.
	3. **Indemnities**
		1. The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:
			1. any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
			2. any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
			3. any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
			4. Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).
2. **GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL**
	1. **Contractor Indemnity**
		1. The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.
	2. **Post Transfer Reporting**
		1. The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:
			1. any proposed, agreed or imposed changes to terms and conditions of service;
			2. disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
			3. any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
			4. completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
			5. out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

**Appendix 1**

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT**

**PART A**

1. Pursuant to paragraph 2.1.1 of this Schedule [X] Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:
	1. Personal, Employment and Career

a) Age;

b) Security Vetting Clearance;

c) Job title;

d) Work location;

e) Conditioned hours of work;

f) Employment Status;

g) Details of training and operating licensing required for Statutory and Health and Safety reasons;

h) Details of training or sponsorship commitments;

i) Standard Annual leave entitlement and current leave year entitlement and record;

j) Annual leave reckonable service date;

k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;

l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;

m) Issue of Uniform/Protective Clothing;

n) Working Time Directive opt-out forms; and

o) Date from which the latest period of continuous employment began.

* 1. **Performance Appraisal**

a) The current year's Performance Appraisal;

b) Current year’s training plan (if it exists); and

c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

* 1. **Superannuation and Pay**

a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;

b) Annual salary and rates of pay band/grade;

c) Shifts, unsociable hours or other premium rates of pay;

d) Overtime history for the preceding twelve-month period;

e) Allowances and bonuses for the preceding twelve-month period;

f) Details of outstanding loan, advances on salary or debts;

g) Cumulative pay for tax and pension purposes;

h) Cumulative tax paid;

i) National Insurance Number;

j) National Insurance contribution rate;

k) Other payments or deductions being made for statutory reasons;

l) Any other voluntary deductions from pay;

m) Pension Scheme Membership;

n) For pension purposes, the notional reckonable service date;

o) Pensionable pay history for three years to date of transfer;

p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and

q) Percentage of pay currently contributed under any added years arrangements.

* 1. **Medical**

a) Sickness and absence records for the immediately preceding four-year period; and

b) Details of any active restoring efficiency case for health purposes.

* 1. **Disciplinary**

a) Details of any active restoring efficiency case for reasons of performance; and

b) Details of any active disciplinary cases where corrective action is on going.

1.6 **Further information**

a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;

b) Short term variations to attendance hours to accommodate a domestic situation;

c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and

d) Information about any current or expected maternity or other statutory leave or other absence from work.

**Part B**

* 1. Information to be provided 28 days prior to the Relevant Transfer Date:

a) Employee's full name;

b) Date of Birth

c) Home address;

d) Bank/building society account details for payroll purposes Tax Code.

**PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT**

1. **Definitions**
	1. In this Schedule [10] Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 10] Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule [10] Part 1 of the Contract.
	2. Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule [10], Part 1, in this Schedule [10] Part 2 unless the context otherwise requires:

"**Employee Liability Information**" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"**Employing Sub-Contractor**" means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

"**Subsequent Relevant Transfer**" means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

"**Subsequent Transfer Date**" means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

"**Subsequent Transferring Employee**" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

"**Transfer Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate .

1. **EMPLOYMENT**
	1. **Information on Re-tender, Partial Termination, Termination or Expiry**
		1. No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):
			1. supply to the Authority such information as the Authority may reasonably require in order to consider the applicaton of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
			2. supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule [X] Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;
			3. provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
			4. acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
			5. inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
		2. Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
			1. ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule [X] (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
			2. inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
			3. enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
		3. No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule [X] (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
		4. Within 14 days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule [X] in respect of Subsequent Transferring Employees.

* + 1. Paragraphs 2.1.1 and 2.1.2 of this Schedule are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.5, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.
		2. On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:
			1. materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
			2. replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
			3. reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
			4. terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Schedule [10] Part 2.

* + 1. The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule [10] Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.
	1. **Obligations in Respect of Subsequent Transferring Employees**
		1. To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:
			1. before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
			2. comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.
	2. **Unexpected Subsequent Transferring Employees**
		1. If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor’s behalf and the Authority shall notify the Contractor on the New Provider’s behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:
			1. the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
			2. if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
			3. the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
				1. any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
				2. any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
				3. any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
1. to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
2. directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
3. to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
	* + - 1. any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
				2. reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
				3. legal and other professional costs reasonably incurred;
		1. the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.
	1. **Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**
		1. If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.
		2. If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:
			1. any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
			2. subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

* + 1. In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.
	1. **Contracts (Rights of Third Parties) Act 1999**
		1. A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
		2. The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
		3. Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.
	2. **General**
		1. The Contractor shall not recover any Costs and/or other losses under this Schedule [10] where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

**Appendix 1**

**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Schedule [10], the following information will be provided:

a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;

b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;

c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);

d) Total redundancy liability including any enhanced contractual payments;

2. In respect of those employees included in the total at 1(a), the following information:

a) Age (not date of Birth);

b) Employment Status (i.e. Fixed Term, Casual, Permanent);

c) Length of current period of continuous employment (in years, months) and notice entitlement;

d) Weekly conditioned hours of attendance (gross);

e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);

f) Pension Scheme Membership:

g) Pension and redundancy liability information;

h) Annual Salary;

i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);

j) Details of attendance patterns that attract enhanced rates of pay or allowances;

k) Regular/recurring allowances;

l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);

3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.

4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor’s general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

**Appendix 2**

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT**

**Part A**

1. Pursuant to paragraph 2.1.2 of this Schedule [10], part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:
	1. **Personal, Employment and Career**

a) Age;

b) Security Vetting Clearance;

c) Job title;

d) Work location;

e) Conditioned hours of work;

f) Employment Status;

g) Details of training and operating licensing required for Statutory and Health and Safety reasons;

h) Details of training or sponsorship commitments;

i) Standard Annual leave entitlement and current leave year entitlement and record;

j) Annual leave reckonable service date;

k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;

l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;

m) Issue of Uniform/Protective Clothing;

n) Working Time Directive opt-out forms; and

o) Date from which the latest period of continuous employment began.

* 1. **Superannuation and Pay**

a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;

b) Annual salary and rates of pay band/grade;

c) Shifts, unsociable hours or other premium rates of pay;

d) Overtime history for the preceding twelve-month period;

e) Allowances and bonuses for the preceding twelve-month period;

f) Details of outstanding loan, advances on salary or debts;

g) Pension Scheme Membership;

h) For pension purposes, the notional reckonable service date;

i) Pensionable pay history for three years to date of transfer;

j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and

ki Percentage of pay currently contributed under any added years arrangements.

* 1. **Medical**

a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and

b) Details of any active restoring efficiency case for health purposes.

* 1. **Disciplinary**

a) Details of any active restoring efficiency case for reasons of performance; and

b) Details of any active disciplinary cases where corrective action is on going.

* 1. **Further information**

a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;

b) Short term variations to attendance hours to accommodate a domestic situation;

c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duites such as a School Governor; and

d) Information about any current or expected maternity or other statutory leave or other absence from work.

**Part B**

* 1. Information to be provided 28 days prior to the Subsequent Transfer Date:

a) Employee's full name;

b) Date of Birth

c) Home address;

d) Bank/building society account details for payroll purposes Tax Code.

 **PART C**

* 1. **Information to be provided within 14 days following a Subsequent Transfer Date:**

Performance Appraisal

1. The current year's Performance Appraisal;
2. Current year’s training plan (if it exists); and
3. Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.7.2 Superannuation and Pay

a) Cumulative pay for tax and pension purposes;

b) Cumulative tax paid;

c) National Insurance Number;

d) National Insurance contribution rate;

e) Other payments or deductions being made for statutory reasons;

f) Any other voluntary deductions from pay;

1. [↑](#footnote-ref-1)