**SC3 (Edn: 10/16)**

Operational Support Programme (OSP) Team

Contract No: OSP/0014

For:

AESP & Technical Documentation Support Contract

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| Between Secretary of State for Defence of the United Kingdom of Great Britain and Northern IrelandTeam Name and address: **''''''' '''''''''''''' ''''''''''''''''''''''****''''''''''''''' ''''' ''' ''''''''''****'''''''''' ''''''''''''' ''''''''''' ''''''''''''''''****''''''''''''****'''''''''''' '''''''**E-mail Address: ''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''Telephone Number: ''''''' ''''''' '''''''''''Facsimile Number: '''''''' ''''''' '''''''''''' | AndContractor Name and address:      E-mail Address: Telephone Number: Facsimile Number:  |

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**Contract No: OSP/0014**

# A General Contract Provisions

## **Interpretation**

a. The defined terms in the Contract shall be as set out in Schedule 1.

b. Unless the context otherwise requires:

(1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.

(2) The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise.

(3) The expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.

(4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.

(5) The heading to any Contract provision shall not affect the interpretation of that provision.

(6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contractmay be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority*.*

(7) Unless excluded within the terms of the Contract or required by law, references to

submission of documents in writing shall include electronic submission.

## **Amendments to Contract**

a. All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority’s Representative (Commercial), and agreed by both Parties.

b. Where the Authority or the Contractor wishes to introduce a change which is not Minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2.a above has been issued.

## **Variations to Specification**

a. The Authority’s Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition A2 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority’s Notice, unless otherwise specified.

b. Any variations that cause a change to:

(1) fit, form, function or characteristics of the Contractor Deliverables;

(2) the cost;

(3) Delivery Dates;

(4) the period required for the production or completion; or

(5) other work caused by the alteration,

shall be the subject to condition A2 (Amendments to Contract). Each amendment under condition A2 shall be classed as a formal change.

## **Precedence**

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

(1) Sections A - H (and J - L, if sections J - L are included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);

(2) Schedule 2 (Schedule of Requirements) and, where included, Schedule 8 (Acceptance Procedure);

(3) the remaining Schedules; and

(4) any other documents expressly referred to in the Contract.

b. If either Partybecomes aware of any inconsistency, within or between the documents referred to in clause A4.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause A4.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition A21 (Dispute Resolution).

## **Severability**

If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

a. such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

## **Assignment of Contract**

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

## **Waiver**

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

b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

## **Third Party Rights**

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

## **Governing Law**

1. Subject to clause A9.d, the Contract shall be considered as a contract made in England and subject to English Law.
2. Subject to clause A9.d and A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
3. Subject to clause A.9.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under English jurisdiction.
4. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause A9.a, A9.b and A9.c shall be amended to read:

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

b. Subject to clause A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this clause A9 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

(2) Clause A21.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

1. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
2. Each Party agrees with each other Party that the provisions of this clause A9 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
3. Where the Contractor’s place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

## **Entire Agreement**

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

## **Disclosure of Information**

a. Subject to clauses A11.d, A11.e, A11.h and A14 each Party:

(1) shall treat in confidence all Information it receives from the other;

(2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

(3) shall not use any of that Information otherwise than for the purpose of the Contract; and

(4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

(1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and

(2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

c. The Contractor shall ensure that its employees are aware of the Contractor’s arrangements for discharging the obligations at clauses A11.a and A11.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses A11.a and A11.b shall not apply to any Information to the extent that either Party:

(1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

(2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or

(3) can show:

(a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

(b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;

(c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or

(d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.

f. The Authority may disclose the Information:

1. on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
4. on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;
5. on a confidential basis for the purpose of the exercise of its rights under the Contract; or
6. on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

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

g. Before sharing any Information in accordance with sub-clause A11.f above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the “Act”) or the Environmental Information Regulations 2004 (the “Regulations”). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

## **Publicity and Communications with the Media**

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

## **Protection of Personal Data**

In the performance of the Contract, both Parties shall comply with their obligations as a data controller, as defined in the Data Protection Act 1998.

## **Transparency**

a. Subject to clause A14.b but notwithstanding condition A11, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with clause A14.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 6 (Contractor’s Commercially Sensitive Information).

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A14.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this condition A14 shall affect the Contractor’s rights at law.

## **Equality**

a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

b. Without prejudice to the generality of the obligation in clause A15.a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent Legislation in the country where the Contract is being performed.

c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this condition A15 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.

d. The Contractor agrees to take reasonable efforts to reflect this condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

## **Child Labour and Employment Law**

a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.

b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

## **Subcontracting**

a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.

b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.

c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:

(1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor’s compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and

(2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.

d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience in the event that the Authority exercises its right to terminate this Contract under Condition A22 (Termination for Convenience), with twenty (20) Business Days notice (or such other notice period as the Authority shall give under this Contract).

e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone : 01204 880733) or http://business.base-uk.org/procurement.

f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by clause D1.a (Third Party Intellectual Property – Rights and Restrictions). On receipt of any such notification the Authority shall issue a written authorisation to the Subcontractor in accordance with clause D1.g. Any such authorisation shall always be subject to clauses D1.j, D1.k and D1.n as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in any such claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.

g. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in the relevant parts of SC3 Schedule “Export Licence”. Where it is not practicable to include the terms set out in SC3 Schedule “Export Licence”, the Contractor shall report that fact and the circumstances to the Authority.

## **Change of Control of Contractor**

a. The Contractor shall inform the Mergers and Acquisitions section, Strategic Supplier Management Team, '''''''''''''''' '''''''''''''' '''' '''' ''''''''''''' ''''''''''''' '''''''''''''' ''''''''''''' ''''''''''''''' '''''''''''''''' ''''''''''''' ''''''''' as soon as practicable of any intended, planned or actual change of Control. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority’s Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.

 c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority’s concerns to the Authority’s satisfaction in accordance with clause A18.a, or has failed to supply or withheld the Information required under clause A18.a.

d. If the Authority exercises its right to terminate in accordance with clause F1.a.(4) the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this clause A18.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority’s sole discretion.

## **Termination for Insolvency or 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:

**Insolvency:**

a. where the Contractor is an individual:

(1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the “IA 86”) or the court making an interim order pursuant to Section 253 of the IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor’s creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor’s creditors) or a moratorium on any of the Contractor’s indebtedness comes into force;

(3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the “DAAS Act”) is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;

(4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

(a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;

(b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;

(c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or

(d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(7) any analogous procedure or step is taken in any jurisdiction;

 b. where the Contractor is a firm:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under schedule A1 of IA 86 in respect of the Contractor;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor’s creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor’s creditors) or a moratorium on any of the Contractor’s indebtedness comes into force;

(3) any event listed in clause A19.a occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor;

(4) any event listed in clause A19.c occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(5) an event listed in clause A19.e in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(6) any event listed in this clause A19.b occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;

(7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(10) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

(a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(b) it is unable to pay its debts in terms of section 221 of IA 86; or

(11) any analogous procedure or step is taken in any jurisdiction;

c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under schedule A1 of IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;

(3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or

(7) any analogous procedure or step is taken in any jurisdiction;

d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

**Corrupt Gifts**

f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (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:

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or

(b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;

(2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an 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 Contract 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 conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

g. In exercising its rights or remedies to terminate the Contract under A19 f. 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):
	1. requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
	2. requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

h. Where the Contract has been terminated under clause A19 f. of this Condition, 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.

## **Consequences of Termination**

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

## **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 A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

## **Termination for Convenience**

a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.

b. In the event that the Authority exercises its rights in accordance with clause A22.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.

c. The Authority’s total liability under clause A22.b shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

## **Contractor’s Records**

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition A11 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years from:

(1) the end of the Contract term;

(2) termination of the Contract; or

(3) the final payment,

whichever occurs latest.

## **Duration of Contract**

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

## **Contractor’s Warranties**

a. The Contractor warrants and represents, that:

(1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;

(2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;

(3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

(4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

# B The Contractor Deliverables

## **B1. Supply of Contractor Deliverables and Quality Assurance**

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

b. The Contractor shall:

(1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables;

(2) comply with all applicable Legislation; and

(3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

c. The provisions of clause B1.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

d. The Contractor shall:

(1) observe, and ensure that the Contractor’s Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority’s premises;

(2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and

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

## **B2. Environmental Requirements**

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

## **B3. Disruption**

1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
2. The Contractor shall inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and certainly no later than seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.
3. The Contractor shall have robust contingency plans in place to ensure that, in the event of industrial action by the Contractor’s Team, provision of the Contractor Deliverables is maintained and such contingency plans shall be available for the Authority to inspect and / or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the contract period.

# C Price

## **C1. Contract Price**

a. The Contractor shall provide the Contractor Deliverables to the Authorityat the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).

b. Subject to condition G2 the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

# D Intellectual Property

## **D1. Third Party Intellectual Property – Rights and Restrictions**

* 1. The Contractor shall promptly notify the Authority as soon as they become aware of:

(1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

(2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything Delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;

(3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause D1.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a commercial off the shelf (COTS) item or service.

* 1. If the Information required under clause D1.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

c. The indemnity in clause D1.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

d. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

e. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

f. If, under clause D.1a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

(1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

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

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

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

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

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

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause D1.a.

j. Where authorisation is given by the Authority under clause D1.e, D1.f or D1.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

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

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

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

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

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

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

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

m. The general authorisation and indemnity is:

(1) Clauses D1.a – D.1.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;

(2) Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;

(3) A Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;

(4) The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) Following a notification under clause D1.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

(6) The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

n. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

o. Nothing in condition D1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

# E Facilities And Assets

## **E1. Access to Contractor’s Premises**

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

# F Delivery

## **F1. Authority’s Remedies for Breach of Contract**

a. If the Contractor:

(1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant date specified in Schedule of Requirements and / or the Specification;

(2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;

(3) supplies Contractor Deliverables that do not comply with clause B1.b;

(4) fails to address the Authority’s concerns to the Authority’s satisfaction in accordance with condition A18, or fails to supply or withholds the Information required under clause A18.a;

1. commits a persistent failure by failing to meet (scoring ‘0’ on) either:
	1. the same single Key Performance Indicator (KPI) on 3 or more occasions in a rolling 12 month period; or
	2. 2 or more KPIs on a rolling 6 month period,

where this Contract includes Core+ condition “Key Performance Indicators and Performance Management"; or

1. otherwise commits a material breach of its obligations under the Contract,

the Authority shall have the right to exercise one or more of the following remedies:

1. where the Contractor commits a persistent failure in accordance with clause F1.a.(5) or where the breach is material in accordance with clause F1.a.(6), to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;

(8) refuse to accept the provision of any further Contractor Deliverables by the Contractor and the Contractor shall refund to the Authority any sums paid in respect of the Contractor Deliverables that fail to comply with the terms of the Contract;

(9) give the Contractor the opportunity at the Contractor’s expense to carry out such remedial services as is necessary to correct the Contractor’s failure or otherwise to rectify the breach within the Authority-specified time limits;

(10) purchase substitute services from elsewhere;

(11) claim such damages as may have been sustained as a result of the Contractor’s breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

1. carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
2. obtaining the Contractor Deliverables in substitution from another supplier.

b. In addition to the Authority’s rights in clause F1.a., if the Authority reasonably believes at any time before the Contract Implementation Date that the Contractor will not be able to achieve Full Service Provision by the Contract Implementation Date then the Authority shall be entitled to terminate the Contract in whole or in part with immediate effect and without liability by giving written Notice to the Contractor.

c. In the event that the Authority terminates the Contract in whole or in part pursuant to clause F1.a.(7) or F1.b. or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

d. This condition F1 shall also apply to any remedial services carried out by the Contractor in accordance with clause F1.a.(9).

e. The Authority’s rights and remedies under this condition F1 are in addition to its rights and remedies implied by statute and common law.

# G Payment And Receipts

## **G1. Payment**

a. Payment for Contractor Deliverables under the Contract shall be made via the Contracting, Purchasing & Finance (CP&F) electronic procurement tool.

b. The Authority shall pay all valid and undisputed claims for payment submitted by the Contractor to DBS Finance on or before the day which is thirty (30) days after the later of:

(1) the day upon which a valid request for approval of payment is received by the Authority; and

(2) the date of completion of the part of the Contract to which the request for approval of payment relates.

c. 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.

d. 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.

## **G2. Value Added Tax**

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the provision of any Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).

c. The Contractor is responsible for the determination of VAT liability. In cases of doubt, the Contractor shall consult HMRC and not the Authority’s Representative. The Contractor shall notify the Authority’s Representative (Commercial) of the Authority’s VAT liability under this Contract, when the liability is other than at the standard rate of VAT, and any changes to it.

d. Where the provision of any Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables.

## **G3. Debt Factoring**

a.Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A6 (Assignment of Contract), the Contractor may assign to a third Party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 (‘the Act’)). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition G3 shall be subject to:

(1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause G1.i;

(2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

(3) the Authority receiving notification under both clauses G3.b and G3.c.(2).

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause G3.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c.    The Contractor shall ensure that the Assignee:

(1) is made aware of the Authority’s continuing rights under clauses G3.a.1 and G3.a.2; and

(2) notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses G3.a.(1) and G3.a.(2).

d.      The provisions of condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

# H Contract Administration

## **H1. Progress Monitoring, Meetings and Reports**

a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor’s Representatives are suitably qualified to attend such meetings.

b. The Contractor shall submit progress reports to the Authority’s Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:

(1) performance/Delivery of the Contractor Deliverables;

(2) risks and opportunities;

(3) any other information specified in Schedule 3 (Contract Data Sheet); and

(4) any other information reasonably requested by the Authority.

## **H2. Authority Representatives**

a. Any reference to the Authority in respect of:

(1) the giving of consent;

(2) the delivering of any Notices; or

(3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this condition H2.

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

c.In the event of any change to the identity of the Authority’s Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition A2 (Amendments to Contract).

## **H3. Notices**

a. A Notice served under the Contract shall be:

(1) in writing in the English Language;

(2) authenticated by signature or such other method as may be agreed between the Parties;

(3) sent for the attention of the other Party’s representative, and to the address set out in Schedule 3 (Contract Data Sheet);

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

(5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

(1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt 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.

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

|  |  |  |
| --- | --- | --- |
| **DEFCON** | **Edition** | **Description** |
| DEFCON 23 (SC3) | 12/14 | Special Jigs, Tooling And Test Equipment |
| DEFCON 76 | 12/14 | Contractor’s Personnel at Government Establishments |
| DEFCON 127 | 12/14 | Price Fixing Condition for Contracts of Lesser Value |
| DEFCON 532B(SC3) | 03/15 | Protection of Personal Data (Where Personal Data is Being Processed on Behalf of the Authority) |
| DEFCON 611 (SC3) | 02/16 | Issued Property |
| DEFCON 625 | 10/98 | Co-Operation On Expiry Of Contract |
| DEFCON 630 (SC) | 03/15 | Framework Agreements |
| DEFCON 637 (SC3) | 03/15 | Defect Investigation and Liability |
| DEFCON 659A\* | 11/14 | Security Measures |
| DEFCON 660 | 12/15 | OFFICIAL- SENSITIVE Security Requirements |
| DEFCON 703 | 08/13 | Intellectual Property Rights - Vesting In The Authority |

# K. The special conditions that apply to this Contract are:

## **K5. Rejection**

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor’s risk and cost.

b. Rejection of any of the Contractor Deliverables under clause a. shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified within 20 (twenty) Business Days.

## **K6. Delivery/Collection**

a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.

b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:

(1) contact the Authority’s Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;

(2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);

(3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;

(4) be responsible for all costs of Delivery; and

(5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2, (Schedule of Requirements for Associated Goods) by the Delivery Date between the hours agreed by the Parties;

c. Where the Contractor Deliverables are to be Collected by the Authority (or a third Party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:

(1) contact the Authority’s Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;

(2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);

(3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions shown therein and in the explanatory notes, the appropriate coloured copy of MOD Form 640, or a Delivery note;

(4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet) by the Delivery Date between the hours agreed by the Parties; and

(5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority’s Representative (Transport).

d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:

(1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause b; or

(2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause c.

## **K8. Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in SC3 Core Plus Schedule “Acceptance Procedure”. If no acceptance procedure is so specified acceptance shall occur when either:

1. the Authority does act in relation to the Contractor Deliverable which is inconsistent with the Contractor’s ownership; or
2. the time limit in which to reject the Contractor Deliverables defined in clause K5.b has elapsed.

## **K13. Key Performance Indicators and Performance Management**

The Contractor’s performance of the Contract shall be monitored and measured using the agreed Key Performance indicators (KPIs) within Section L of this Contract.

## **K16. Limitation of Contractor’s Liability**

1. The Contractor’s liability under, or in relation to the contract shall be limited in respect of the risks as set out in Schedule 3.
2. The Authority has agreed the limitations(s) to the Contractor’s liability, as set out at Schedule 3, based on the risk assessment and activities provided by the Contractor as set out at Schedule 5 of the contract.
3. Nothing in this condition shall exclude or limit the Contractor’s liability in respect of the following:
	1. Any liability arising under or by reason of the Cotnractor’s indemnities granted to the Authority set out in DEFCONs 91 and 638 (SC3) or condition D1, as applicable;
	2. Death or personal injury;
	3. Fraud or fraudulent misrepresentation;
	4. Wilful misconduct.

# L. The processes that apply to this Contract are:

## **L1. Authorisation and Performance of work**

1. All work required under the Contract shall be notified to the Contractor on the Task Forms at Schedule 8 to the Contract. The Authority’s Project Manager shall initiate TPF Part 1s.
2. The Contractor shall complete and sign the TPF Part 2 detailing the following information: firm price, material costs, Subject Matter Expert costs, travel and subsistence costs, delivery completion date, number of hours and hourly rate. TPF Part 2s shall be submitted to the Project Manager for circulation and approval.
3. A completed TPF Part 3 shall be the Contractor’s authority to proceed with the agreed work.
4. A completed TPF Part 4 shall be the Authority’s confirmation that all work has been carried out to satisfaction.

## **L2. Termination of Tasks**

1. In addition to the Authority’s rights of termination under the contract, any individual task authorised under condition L1 may be terminated by the Authority at any time in writing to the Contractor. Where appropriate, the Authority may require the Contractor to furnish a report covering work done to the date of termination with such recommendations as may be possible at that stage. The Authority’s liability shall be confined to payment.

## **L3. Risk Management Process**

1. The Contractor shall maintain and manage a joint Risk Register with the Authority. The register shall record all risks (both to Authority and Contractor) which affect the performance of the Contract and work required under the Statement of Requirement (SOR). The Contractor shall make the Risk Register available to the Authority electronically.
2. The register shall be reviewed every Quarterly meeting or as requested by the Authority.

## **L4. Key Performance Indicators (KPIs)**

**SERVICE LEVELS AND KEY PERFORMANCE INDICATORS (KPIs)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **1** | **PERFORMANCE - DELIVERY** | **Criteria** | **Score** | **Score** | **Max Score (40)** |
| **A** | **Task delivery** | 10% overrun tolerance of tasks delivered in the quarter (i.e. A 100 day delivery programme should not deliver more than 10 days late) | Target ≤10% = 2011-15% = 1416-20% = 7>20% = 0[If more than one task is delivered in the quarter, the average sore will be calculated] |  | / 20 |
| Should any task be delayed beyond the 10% overrun tolerance, the pricing shall be subject to a **2%** reduction of the total cost specified on the relevant TPF part 2. Any delays not due to the contractor will result in a “clock stop”, and an agreed extension to the delivery timescales. |
| **B** | **Overall delivery on time or within tolerance** | 80% of all tasks delivered in the quarter are to be delivered on time | Target ≥80% = 2075-79% = 1470-74% = 7<70%=0 |  | / 20 |
| **2** | **PERFORMANCE - QUALITY** | **Criteria** | **Score** | **Score** | **Max Score (30)** |
| **A** | **Engagement with stakeholder community** | This will be a random sample check of the key stakeholders to assess the quality of engagement with the community. | (From questionnaire response **– KPI** **Annex A**) | - | / 10 |
| **B** | **Supplier provides products that meet MOD standards** | The task outputs will adhere to the “Defence Technical Documentation Guidance” and internal business criteria | No incidents = 101 = 72 - 3 = 3>3 = 0 |  | / 10 |
| **C** | **Supplier is consistent is supplying quality products.** | Tasks shall be accepted without the need for re-work following formal Rejection | No Rejections = 10≥1 = 0 |  | / 10 |
| **3** | **PERFORMANCE - COMMUNICATION** | **Criteria** | **Score** | **Score** | **Max Score (10)** |
| **A** | **Response to enquires** | Enquiries shall be acknowledged by the contractor within 2 working days. To be reported by exception. | No reports =51 report = 42-4 report = 2>4 reports =0 |  | / 5 |
| **B** | **Response to TPF Part 1** | 90% of TPF Part 1s shall be responded to (by way of a TPF part 2) within 10 working days | Target ≥90% =1085-89% = 780-84% = 3<80%=0 |  | /10 |
| **4** | **TECHNICAL SUPPORT** | **Criteria** | **Score** | **Score** | **Max Score (20)** |
| **A** | **Monthly minutes** | Contractor to provide minutes within 5 business days of each meeting (i.e. Tuesday to Tuesday)  | Produced = 5Not produced = 0 |  | / 5 |
| **B** | **Electronic Shared Area maintenance**  | A random check will be conducted to ensure it:\* holds all progress, programmes, engagement records, draft and final issue publications.\* is maintained up-to-date throughout the course of the contract (i.e. Information never more than 5 days out of date.) | No incidents = 51-3 = 3>3 = 0 |  | / 5 |
| **C** | **The Contractor is to demonstrate SME against the publications covered within this contract** | The Contractor is to inform the Authority within 1 week of changes to key personnel, maintains as a minimum the skill sets as at contract award and all personnel are to be suitably qualified. | Target = 5Not met = 0 |  | / 5 |
|  |  |  | **TOTAL** |  | **/ 100** |

In order for the Authority to consider the taking up of option years, the contractor shall meet an average KPI score of 80% across the on-going life of the contract. Should the contractor fail to meet this specification, the Authority shall not invoke the option years, and the contract shall expire on the relevant contract end date.

**KPI Annex A**

**OSP/0014 – AESP 2 - Stakeholder Engagement Survey**

**Name:**

**Task Name:**

**Task Number:**

**Date:**

**Introduction**

This is a random sample check of Key Stakeholders, with the purpose being to record the satisfaction with the Contractor’s community engagement.

Each question is scored out of 10, with scoring guidance provided.

Space is provided to allow the recording of knowledge gained from ‘Learning from Experience’ and suggestions for future improvement.

**Please return this as an attachment to: ''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **The timeliness of correspondence and provision of a quote** | Excellent = 10Very Good = 8Good = 6Satisfactory = 5Poor = 0 | Score = / 10 |
| **2** | **The professionalism and technical expertise of staff with whom you communicated** | Excellent = 10Very Good = 8Good = 6Satisfactory = 5Poor = 0 | Score = / 10 |
| **3** | **How well the deliverable met the requirements of its content, clarity and credibility (SQEP provided)** | Excellent = 10Very Good = 8Good = 6Satisfactory = 5Poor = 0 | Score = / 10 |
| **4** | **The overall levels of communication and professional conduct** | Excellent = 10Very Good = 8Good = 6Satisfactory = 5Poor = 0 | Score = / 10 |
|  |  | Interim Score | \_\_\_\_\_\_\_\_\_\_\_/ 40 |
|  |  | KPI Score | (Interim / 4) = \_\_\_ |

**Learning from Experience and Suggestions**

Please share any LfE you have gained, or any suggestions you wish to make:

Schedule 1 - Definitions of Contract

**Core Definitions**

**AG173** means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;

**AG210** means the MOD invoice form AG210 that suppliers submit as an invoice to enable a stage or milestone payment to be processed;

**Assets** means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;

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

**Authority’sRepresentative(s)**shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority’s Representative(s) in connection with the Contract. Where the term “Authority’s Representative(s)” in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority’s Representative(s) shall be the designated person(s) for the purposes of clause H2.b;

**Business Day** means any day excluding:

1. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;
2. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and
3. such periods of holiday closure of the Contractor’s premises of which the Authority is given written Notice by the Contractor at least ten (10) Business Days in advance;

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

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

**Child Labour Legislation** means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.

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

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

**Contract** means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition A2 (Amendments);

**Contract Implementation Date** means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required;

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

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

**Contractor Commercially** means the Information listed in the completed Schedule 6 -

**Sensitive Information** Contractor’s Commercially Sensitive Information Form, which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

**Contractor Deliverables** means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification;

**Contractor’s Representative** means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract;

**Contractor’s Team** means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract;

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

a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

1. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

**Crown Use** in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

**DABForm10** means the MOD invoice summary form;

**DBS Finance** means Defence Business Services Finance, at the address stated at Annex A to Schedule 3 (Contract Data Sheet);

**DEFFORM** means the MOD DEFFORM series which can be found at https://www.gov.uk/acquisition-operating-framework;

**DEF STAN** means Defence Standards which can be accessed at https://www.dstan.mod.uk;

**Deliver** means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with SC3 Condition “Delivery / Collection” and Delivered and Delivery shall be construed accordingly;

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

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

**EffectiveDate of Contract** means the date specified on the Authority’s acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;

**Firm Price** means a price (Excl. VAT) which is not subject to variation;

**Full Service Provision** means the provision by the Contractor of all of the Contractor Deliverables in accordance with the Conditions of this Contract;

**Information** means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract;

**Key Performance Indicators** means the agreed method of monitoring and measuring the Contractor’s performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition “Key Performance Indicators and Performance Management”;

**Legislation** means in relation to the United Kingdom:

a. any Act of Parliament;

b. any subordinate Legislation within the meaning of section 21 of the Interpretation Act 1978;

c. any exercise of the Royal Prerogative; or

d. any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

**Minor Change** means any change that does not significantly/materially affect the nature of the Contractor Deliverables;

**MODForm640** means the MOD form in 5 separate parts which may be obtained from the address specified for obtaining MOD forms and documentation in Schedule 3 (Contract Data Sheet);

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

**CP&F** means the MOD electronic ordering, receipting and payment system;

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

**Schedule of Requirements** means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable;

**Specification** means Schedule 5 (Specification) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables;

**Subcontractor** means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);

### **Supported Businesses** means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;

### **TransparencyInformation** means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

**Appendix A to Schedule 1 – Core+ Definitions of Contract**

**Core+ Definitions**

**Articles** means the Contractor Deliverables (goods and / or the services), including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. **(This definition only applies to Core Plus Schedule “Hazardous Articles, Materials or Substances supplied under the Contract” and any DEFCONs if either are included in this Contract)**;

**Collect** means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause K14.c and Collected and Collection shall be construed accordingly;

**Consignor** means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;

**CPET**  means the UK Government’s Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy

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

**(D of Q)** managed;

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

**Employee** shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given. **(This definition only applies to the narrative condition “Security Measures”)**;

**Evidence** means either:

1. an invoice or delivery note from the timber supplier or subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or
2. other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET;

**FLEGT** means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;

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

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

**Independent Verification** means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to “BS EN ISO / IEC 17065: 2012 Conformity assessment - Requirements for bodies certifying products, processes and services”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;

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

**Military Level Packaging** Packaging that by the nature of the packaged items nature, or envisaged transport / movement or handling within the military supply chain and requires enhanced protection beyond that which commercial Packaging normally provides;

**Military Packaging** is a MOD sponsored scheme to accredit military packaging

**Accreditation Scheme** designers capable of producing SPIS designs acceptable

**(MPAS)** to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS/DR14. MPAS detail is available from DESJSCSCM-EngTLS-Pkg@mod.uk;

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

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

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

**Overseas** shall mean non UK or Foreign

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

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

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

**(PDA)** design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;

**Primary Packaging Quantity** means the quantity of an item of material to be contained in an

**(PPQ)** individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;

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

1. pre-consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber;
2. post-consumer reclaimed wood and wood fibre, and driftwood;
3. reclaimed timber abandoned or confiscated at least ten years previously;

it excludes sawmill co-products;

**Short-Rotation Coppice** means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

**STANAG 4329** means the publication NATO Standard Bar Code Symbologies which can be sourced from Information at www.dstan.mod.uk/faqs.html;

**Timber and Wood-Derived** means timber (including Recycled Timber and Virgin Timber but

**Products** excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

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

Schedule 2 - Schedule of Requirements for Services for Contract No: OSP/0014

For: AESP & Technical Documentation Support Contract

|  |  |  |  |
| --- | --- | --- | --- |
| **Item Number** | **Contractor Deliverables** | **Notes to Supplier** | **Firm Price £ (ex-VAT)** |
| 1 | AESP & Technical Documents | Each task to be raised on its own Task Proposal Form. This could cover conversion, updating, or new document creation as per the task’s Statement of Requirement.Acceptance to be in accordance with **K8**.  | In accordance with Schedule 7 |
| 2 | Meeting Minutes, Monthly Reports (inc. Finance Accrual) | Schedule 5, Annex A, Appendix 5 gives detail on these deliverables. | '''''' |

**Schedule 3 - Contract Data Sheet for Contract No: OSP/0014**

|  |  |
| --- | --- |
| **Condition A9 Governing Law**  | Contract to be governed and construed in accordance with: (one must be chosen) English Law [x]  Scots Law [ ]  clause A9.d shall applySolicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause A9.g (if applicable) are as follows:  |
| **Condition A22 Termination for Convenience** | The Notice period for terminating the Contract shall be 20 Business Days. |
| **Condition A24 Contract Period** | The Contract expiry date shall be: March 2019 |
| **Clause B1.b.(1) Contractor’s Obligations – Quality Assurance** | Is a Deliverable Quality Plan required for this Contract? Yes [x] No [ ] If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within 60 Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.**Other Quality Assurance Requirements:**      |
| **Condition C1 Contract Price (Excl. Vat)** | All Schedule 2 line items shall be Firm Price other than those stated below:Line Items Clause K refersLine Items Clause K refersLine Items Clause K refers |
| **Clause G1.a Payment** | DEFFORM 30 Agreement refers (if applicable)Reference: TBCDate: TBC  |
| **Clause G1.c.(2) and G1.c.(3) Payment** (for Schedule 2 items) | Payment is to be enabled by: Line Items All CP&F Refers Line Items MOD Form 640 refers Line Items AG173 refers (Address to which MOD Form 640 or AG173/AG210 (approval for payment) should be sent if different from Consignee): |
| **Clause H1.a Progress Monitoring** | The Contractor shall be required to attend the following meetings:Type: Progress Frequency: Monthly (plus ad-hoc as agreed)Location: MOD Abbey Wood, Bristol, BS34 8JH |
| **Clause H1.b Progress Reports** | The Contractor is required to submit the following Reports:Type: Progress (including Financial Accrual)Frequency: MonthlyContent: See SOR; Annex A, Appendix 1, Method of Delivery: SoftcopyDelivery Address: Project Manager’s email: TBC  |
| **Clause H2.b Authority’s Representatives** | The Authority’s Representatives for the Contract are as follows:Commercial: ''''''''' ''''''''''''''''''Project Manager: TBCPayment: TBC |
| **Clause H3.a.(3) Notices** | Notices served under the Contract shall be sent to the following address:Authority:''''''''''' '''''''''''''' '''''''''''''''''''''''''''''''''''''''''''' '''''' '''' ''''''''''''''''''''''''' '''''''''''''' '''''''''''''' ''''''''''''''''''''''''''''''''''''''''''' '''''''''Contractor: TBC |
| **Clause H3.a.(5) Notices** | Notices served under the Contract can be transmitted by electronic mail:Yes [x] No [ ]  |

|  |  |
| --- | --- |
| **Condition K1 Certificate of Conformity (Core+ Only)** | Is a Certificate of Conformity Required for this Contract? Yes [ ] No [x] Line Items: All If Yes does the Contractor Deliverables require Traceability throughout the supply chain?Yes [ ] No [ ] Line Items:  |
| **Condition K2 Marking of Contractor Deliverables (Core+ Only)** | Special Marking requirements:**N/A** |
| **Condition K3 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances (Core+ Only)** | 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: **N/A** |
| **Clause K4.i Timber and Wood-Derived Products (Core+ Only)** | A completed SC3 Core Plus Schedule “Timber and Wood-Derived Products Supplied under the Contract: Data Requirements”, is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:The Authority’s Representative (Commercial)or, if only a hardcopy is available to:The Authority’s Representative (Commercial)to be Delivered by the following date: **N/A** |

|  |  |
| --- | --- |
| **Clause K5.b Rejection (Core+ Only)****(Note: If no period is inserted here the time period shall be 20 Business days)** | Time limit for rejection of the Contractor Deliverables shall be 20 Business Days, unless otherwise agreed between The Authority and Contractor prior to the issue of TPF Part 3. |
| **Clause K6.a Delivery** (for Schedule 2, Appendix A items) **(Core+ Only)** | The transport requirements shown below are applicable:Line Items All To be Delivered by the Contractor (See box “Delivery by the Contractor” below)Line Items **N/A** To be Collected by the Authority (See box “Collection by the Authority” below) |
| **Clause K6.b Delivery by the Contractor** (for Schedule 2, Appendix A items) **(Core+ Only)** | (Where applicable, see box “Delivery” above.)Special Delivery Instructions:AESPs to be delivered via TDOL vaultProgress Reports to be delivered to Project Manager specified at Clause H.1.b.Each consignment of the Contractor Deliverables to be accompanied by: Line Items **N/A** MOD Form 640Line Items **N/A** DEFFORM 129JLine Items **N/A** Delivery Note |
| **Clause K6.c Collection by the Authority** (for Schedule 2, Appendix A items) **(Core+ Only)** | (Where applicable, see Box “Delivery” above)Special Collection Instructions:**N/A**Each consignment of the Contractor Deliverables to be accompanied by: Line Items: **N/A** MOD Form 640Line Items: **N/A** DEFFORM 129JLine Items: **N/A** Delivery NoteConsignor Address: Line Items: Address: Line Items: Address: Consignee Address Details:Line Items: Address Details: Line Items: Address Details: Line Items: Address Details:  |
| **Condition K7 Self to Self Delivery (Core+ Only)** | Is Self to Self Delivery required:Yes [ ] No [x] If Yes, Delivery address applicable:  |
| **Other Addresses and Other Information**(Covers forms and publications addresses and official use information) | **See Annex A to Schedule 3 (DEFFORM 111)** |

|  |
| --- |
| **DEFFORM 111****(Edn 02/16)****Appendix - Addresses and Other Information** |
|  | **1. Commercial Officer**Name: '''''''''' ''''''''''''''''''Address: ''''''''''' '''''''''''''''''''''''''''''''''''''''''''''''''' '''''' ''' ''''''''''''''''''''''' '''''''''''''' ''''''''''''' ''''''''''''''''''''''''''''''''''''''''''' '''''''''Email: ''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' |  | **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)(from whom technical information is available)''''''''''''''''' ''''''''''''''''''''''''''''''' '''''''''''' ''''''''''''''''' '''''''''''''' '''''''''''''''''''''''''''''''''''''''''''' ''''''''''''''''''''''''' '''''''''' |  | **9. Consignment Instructions**The items are to be consigned as follows:See Schedule of Requirements at Schedule 5 |  |
|  |
|  | **3. Packaging Design Authority**Organisation & point of contact: (Where no address is shown please contact the Project Team in Box 2)  |  | **10. Transport.** The appropriate Ministry of Defence Transport Offices are:**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH Air Freight CentreIMPORTS 🕿 030 679 81113 / 81114 Fax 0117 913 8943EXPORTS 🕿 030 679 81113 / 81114 Fax 0117 913 8943Surface Freight CentreIMPORTS 🕿 030 679 81129 / 81133 / 81138 Fax 0117 913 8946EXPORTS 🕿 030 679 81129 / 81133 / 81138 Fax 0117 913 8946 |  |
|  |  |
|  | **4. (a) Supply / Support Management Branch or Order Manager:****Branch/Name:** **Tel No:**  **(b) U.I.N.**  |  | **B.** **JSCS**JSCS Helpdesk No. 01869 256052 (select option 2, then option 3) JSCS Fax No. 01869 256837www.freightcollection.com  |  |
|  |
|  | **5. Drawings/Specifications are available from**See Box 2 above |  | **11. The Invoice Paying Authority (see Note 1)**Ministry of Defence 🕿 0151-242-2000DBS FinanceWalker House, Exchange Flags Fax: 0151-242-2809Liverpool, L2 3YL **Website is:** https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing |  |
|  |
|  | **6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to**N/A(where no address is shown the mauve copy should be destroyed) |  | **12. Forms and Documentation are available through \*:**Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C SiteLower ArncottBicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)**Applications via fax or email:** DESLCSLS-OpsFormsandPubs@mod.uk |  |
|  |
|  | 1. **Quality Assurance Representative:**

'''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' '''''''''''' '''''''''''''''''' ''''''' '''' '''''''''''''''''''''''' ''''''''''''''' '''''''''''''' ''''''''''''''''''''''''''''''''''''''''''''''' '''''''''''''''''' ''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' 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.uwh.diif.r.mil.uk/  [intranet] or https://www.dstan.mod.uk/ [extranet, registration needed].  |  | **NOTES****1. Forms.** Hard copies, including MOD Form 640 are available from address in Box 12., All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.**2.\*** Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site: https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm |  |
|  |
|  |

Schedule 4 - Contract Change Process (i.a.w. clause A2.b) for Contract No: OSP/0014

**1. Authority Changes**

a. Subject always to condition A2 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.

**2. Notice of Change**

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

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

**3. Contractor Change Proposal**

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

b. The Contractor Change Proposal shall include:

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

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

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

1. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
2. evaluate the Contractor Change Proposal;
3. where necessary, discuss with the Contractor any issues arising and, following such discussions, the Authority may modify the Authority Notice of Change and the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
	* + 1. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
				1. indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with condition A2 (Amendments to Contract); or
				2. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.
			2. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.
			3. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with clause 4.b.(1).

**5. Contractor Changes**

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

Schedule 5 - Specification for Contract No: OSP/0014

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| **AESP & Technical Documentation Support Contract** |
|  |
| **Statement of Requirement** |
| Operational Infrastructure Programme |
|  |
| **Issue:** | 1 |  |
| **Issue Date:** | 16/12/2016 |  |
| **Number of Pages:** | Including front cover: 23 |  |

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**AUTHORISATION**

|  |  |  |
| --- | --- | --- |
| **Prepared by:** | ''''''''''' '''''''''''''''''''''''''''''' ''''''' ''''''''''''''''''''''''''''''''''''''''''''' |  |
| **Signature:** | [original signed] |  |
| **Date:** | 16/12/2016 |  |
| **Authorised by:** | ''''''''''''' ''''''''''''''''''''''''''''''''''' ''''''' '''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' |  |
| **Signature:** | [original signed] |  |
| **Date:** | 16/12/2016 |  |
| **Approved by:** | '''''''''''''''' '''''''''''''''''''''''''''''''' ''''''' '''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' |  |
| **Signature:** | [original signed] |  |
| **Date:** | 16/12/2016 |  |

**AMENDMENTS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Issue No | Date | Incorporated by | Para | Details of Change |
|  |  |  |  |  |
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**AESP & Technical Documentation Support Contract**

**Statement of Requirement**

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 Appendix 6 Accruals Evidence Table

**Statement of Requirement**

**1 Overview of requirement**

The Authority has a requirement to identify, author, and support the range of OSP sponsored technical publications. The requirement includes a wide range of activities to ensure that the publications are produced and maintained to a level which meets the needs of the user community, including but not limited to, conversion, creation, amendments, illustration, and updating. This will require the creation of a communications plan and record keeping protocol, stakeholder engagement and the prioritisation/review of work at monthly progress meetings. The frequency of the progress meetings will be reviewed after 6 months.

**2 Scope of documents to be managed**

**2.1 Documents**

OSP provides programme management for Operational Infrastructure Programme (OIP), Protected Mobility Vehicle Programme (PMVP) and Operational Support Vehicles Programme (OSVP) and is responsible for maintaining a number of technical publications. To date this responsibility amounts to upwards of 3000 Army Equipment Support Publications (AESPs), Air Publications (APs) and Interactive Electronic Publications (IETPs). The number of publications may vary during the course of the contract. An indicative list of publications managed by OSP can be found at SOR Annex A: Appendix 2, but this list may be amended throughout the life of the contract.

**2.2 IPR**

Where intellectual property rights (IPR) are not vested with the Authority and/or technical documentation is currently/in future managed by the Original Equipment Manufacturer (OEM) as part of a through life programme, this work will fall outside of the scope of this Contract.

**3 Scheduling of work**

**3.1 Identifying Work**

The Authority, via the relevant ESM, is to identify work required by completing the Tasking Proposal Form Part 1. The Contractor may also identify documents in need of update/creation but should not proceed with any work unless committed to under the SOR or in receipt of a fully endorsed Tasking Proposal. The Contractor shall provide a firm priced quotation in line with Schedule 7 to Contract by completing Tasking Proposal Form (TPF) Part 2. The Authority will then approve or reject the recommended work streams to enable the identify/update/create work to take place by completing Tasking Proposal Part 3. All tasked work is to be completed against a programme of work which is to be agreed between the Contractor and the Authority, is subject to change and review predominantly at monthly project review meetings. Confirmation of acceptance and delivery of each Tasking Proposal will be signified by the ESM signing Tasking Proposal Part 4.

**3.2 SME Support**

Throughout this process, the Contractor will provide SME support to all publications previously worked on, updated and developed. SME Support includes the coordination and logging of all SME and Stakeholder input and activity relating to the publications that have previously been worked on, updated and developed.

**4 Outline of how the contract should work**

A summary of how the contract shall be carried out is provided below, with a simplistic illustration provided at SOR Annex A, Appendix 3. A list of contract deliverables and acceptance criteria are provided at SOR Appendix 1. In summary, the contract should operate in the following way:

* 1. **Contract Start up**

At the start of the contract, the Contractor shall put standing arrangements in place, which shall endure throughout the contract (subject to Authority approval. These shall include, but not be limited to:

* + 1. A Communications Plan
		2. A record keeping protocol - part of the Deliverable Quality Plan (DQP)
		3. A Configuration Management / Version Control Plan – part of the DQP
	1. **Identification of Task Work**
		1. Throughout the duration of the contract, the Contractor is expected to agree programmes of work for each individual task along with an overall rolling programme of work for all enduring tasks and outputs.
		2. Identification of tasks shall be as specified in section 3 above. Priority of tasks to be worked on shall be informed by stakeholder engagement, and agreed by the Authority at monthly progress meetings.

* 1. **Tasking Process**
		1. The Authority shall formally issue a request for a quote by issuing a completed Task Processing Form (TPF) Part 1 (as shown in Schedule 8).
		2. The contractor shall have 10 working days, unless otherwise agreed by The Authority, to return a completed TPF Part 2. This shall:
* detail the time and resources allocated to undertake the task
* be firm priced
* be valid for 30 working days
	+ 1. Upon receipt of the TPF Part 2, The Authority shall have 30 working days to review, and agree if acceptable. During this period, the appropriate internal approvals shall be sought. Authorisation of the TPF Part 3 shall be the Contractor’s authority to proceed.
		2. The Contractor shall be required to adhere to the agreed targets specified in the TPF Part 2 and if any deviation is identified, this shall be communicated to the Authority within five (5) working days of its identification.
		3. Once the task has been delivered, The Authority shall have 20 working days to review and accept. Once accepted, the Contractor shall issue a TPF Part 4 with the Task Number and Revision Number. The Authority shall then complete and sign this to confirm task completion, and authorise payment in accordance with “Condition G1. Payment”.
		4. The tasking process for all tasks will be as follows:

* 1. **Conducting Task Work**

Once the Task Work schedule has been agreed, the Contractor will develop a programme for delivering it (to be agreed with the Authority) and will embark upon updating the relevant publication(s). The Contractor shall be responsible for delivering an updated publication suitable for issue. They shall also be responsible for carrying out all format, illustration, organisation reference, and SME Content changes. It is acknowledged that the Input from both SMEs within the Authority and externally is a key part of the work. The Contractor is responsible for identifying all appropriate SME inputs and all liaisons with these stakeholders. If support is required from external organisations then this shall be included in the original task request. Should there be a need to task separately for external stakeholder engagement then the Contractor shall make this clear in the original task request documentation including the requirement and cost associated with setting up any Internal Business Arrangements that may be required. The Contractor is to make all necessary arrangements and manage the delivery of the required external SME input. All update work, internal and external stakeholder engagement feedback and decisions are to be recorded for future reference as necessary and in accordance with the agreed record keeping protocol.

* 1. **Publications Support**

Throughout the course of the contract the Contractor shall provide support where required including responding to enquiries via a helpdesk telephone available Mon-Fri 0900hrs – 1700hrs. The Contractor should maintain an enquiry log detailing the enquiry, proposed resolution, timescale for response and open/close label which shall be reviewed at monthly progress meetings. Further information on support activity is located at Section 8 and Statement of Requirement Annex A, Appendix 1. The Contractor shall keep the Maritime Collaborative Working Environment (CWE) up to date with current document versions, so that the Authority can gain access to the latest version of any given publication under development, along with the relevant stakeholder correspondence, evidence and records. Information to be submitted to JAMES as required following updates to publications. The Contractor may also attend publications workshops as agreed with the Authority.

* 1. **Contract Management & Feedback**

The Contractor shall hold routine monthly progress meetings with OSP Project Manager as a minimum, where progress will be assessed against the programme. A full and detailed record of progress is to be provided to the Authority each month, as well as minutes from any meeting attended. Any issues associated with the supply of information from Authority stakeholders are to be identified during the monthly meetings, although it is expected that the Contractor will also keep in regular contact with OSP Project Manager to make them aware of any issues that might lead to a delay to the delivery of the agreed tasking outputs.

**5 Stakeholder Input (including but not limited to)**

The Contractor is responsible for engagement with all appropriatestakeholders. If formal arrangements are required, the Contractor shall make these arrangements (where possible), or alternatively they shall support the Authority in setting up these arrangements (e.g. Internal Business Arrangements). In some situations, it may be necessary to carry out stakeholder engagement with external organisations. Should this be required then this engagement shall be included on the tasking form for the update work on the relevant publication(s), with all stakeholder engagement costed in full. The Contractor shall be responsible for managing the delivery of External Organisations to deliver the necessary engagement information (input).

**Listed below are the stages at which stakeholder engagement shall be required along with potential stakeholders (lists are not exhaustive).**

**5.1 Different stages of input where stakeholder engagement is required:**

5.1.1 Input into review

5.1.2 Ratify deliverable

**5.2 Different Stakeholder groups which the Contractor should consider engaging with when carrying out update work include:**

5.2.1 DE&S Equipment Manager

5.2.2 Trading fund organisations

5.2.3 Engineering authorities

5.2.4 Regulators

5.2.5 Industry

5.2.6 Academia

5.2.7 Training organisations

5.2.8 Maintainers

5.2.9 Others Government Departments

5.2.10 Other Authority organisations

5.2.11 Military establishments

**5.3 Stakeholder Customers: i.e. the users of the documents. Note: there will almost certainly be overlap with some of those listed at 5.2:**

5.3.1 ARMY HQ

5.3.2 Air Command

5.3.3 Fleet HQ

5.3.4 Capability Directorates

5.3.5 Project teams

5.3.6 Divisions

**5.4** **Authority facilitators:**

From time to time it will be necessary to liaise with Authority facilitators both in order to obtain and issue information on to the existing Authority information enabling facilities (e.g. TDOL, etc), but also to ensure that the information is suitably configured and compatible.

5.4.1 DSTAN

5.4.2 JAMES

5.4.3 SEOC

**5.5 Authority decider:**

OSP Project Manager will manage/monitor the contract, will act as the Primary decider with regards to endorsing work to go ahead and shall be responsible for declaration of completeness of work or by sub-delegation to the ESM. OSP Project Manager will not ratify each piece of work as this is to be done by the stakeholder community and shall be demonstrated by the Contractor through their record keeping protocol. OSP Project Manager will hold the power to veto the ratifications if necessary and appropriate. OSP Project Manager is responsible for monitoring progress against the overall programme and the individual work stream programmes and will chair the progress meetings. Any issues regarding the delivery of this contract are in the first instance to be raised to the attention of OSP Project Manager.

**6 Specific tasks and associated deliverables (also see Appendix 1)**

**6.1 Contract Start-up**

**6.1.1 Communications Plan and a rolling programme of activity:**

A communications plan is to be agreed and delivered and shall detail how the Contractor will communicate with the stakeholder community throughout the duration of the contract. This should also address how any Internal Business Agreements (IBAs) or Service Provision Agreements (SPAs) would be produced where necessary.

**6.1.2 Record Keeping Protocol:**

This should cover all aspects of the work, including changes to publications and stakeholder engagement records etc.

**6.2 Conducting Task Work**

**6.2.1 Present a detailed cost breakdown and programme of activity for each publication requiring amendment:**

The Contractor shall provide a detailed breakdown of cost and activity required in respect of each publication requiring an amendment or update. The breakdown shall be provided using the Authority’s tasking process, further details of which will be provided in the contract terms and conditions.

**6.2.2 Conduct task-related stakeholder engagement:**

The Contractor shall carry out and coordinate all task-related stakeholder engagement required in pursuit of successfully updating or amending publications. Engagement with external stakeholders, industry or academia is also included within this activity and a full auditable record should be kept in accordance with the agreed record keeping protocol. IBAs for any engagement with external stakeholders will be set up where necessary.

**6.2.3 Provide Draft versions of publications under review and/or requiring amendment:**

To support production of the final deliverable, the Contractor shall provide the Authority with latest versions of all publications under review or requiring amendment, and shall also make them available to the stakeholder community. These publications shall be made available to the Authority in soft copy and shall be uploaded into the CWE. All documents shall be produced in accordance with the latest available formatting guidance and in accordance with relevant legislation .doc and .pdf.

**6.2.4 Produce Final Drafts of updated or amended Technical Publications, carry out pagination, inform Bicester using Form 374 and upload the final deliverable and all source information to TDOL:**

The Contractor shall produce publications in line with stakeholder feedback and input and in accordance with current legislation, unless otherwise specified the Contractor will deliver publications to the Technical Documents OnLine (TDOL) vault in Microsoft Word 2003 and .pdf. The final publication must be fully ratified by the relevant stakeholder community (note that the ratification process for a Defence Standard (DSTAN) can take up to 6 months). The document shall be produced in accordance with the latest formatting guidance (Defence Technical Documentation Guidance) which shall be agreed as part of each tasking request.

**6.3 Publications Through Life Support (TLS)**

* + 1. **Attend meetings in support of OSP sponsored publications:**

The Contractor shall attend any additional ad hoc meetings required in support of OSP sponsored publications. The Contractor shall produce minutes for these meetings (if they are not provided by another party) or obtain a copy of these minutes for the Shared File Environment and onward transmission to OSP Project Manager.

* + 1. **Liaison with SEOC and updating network enabled Capabilities:**

The JAMES team shall be engaged with and provided with all relevant forms and user information on completion of each work stream, where appropriate. All updated Army Equipment Support Publications (AESPs) shall be uplifted onto TDOL, and all associated design repository update activity shall be carried out by the Contractor. It shall be the responsibility of the Contractor to ensure that all other associated network enabled capabilities are updated as necessary to appropriately record the latest information held within the updated/new publication.

* + 1. **Production of KIT Articles:**

The Contractor shall contribute to articles in KIT Magazine where appropriate and agreed. OSP Project Manager will support this activity by providing relevant IT access and in signing off articles prior to publishing.

* + 1. **Electronic File Sharing Environment:**

The existing Electronic File Shared Working Environment on the Maritime Collaborative Working Environment (CWE) shall be used. The CWE will be used to ensure access to the latest version of any given publication (under development), along with the relevant stakeholder correspondence, evidence and records. The shared working environment shall also be used to store all correspondence associated with the running of the contract, and the enquiries dealt with during the duration of the contract.

**6.4. Contract Management & Feedback**

**6.4.1** **Progress Meetings:**

The Contractor shall attend Progress Meetings at the Authority’s Abbey Wood site (and occasionally at other locations) and shall produce an agenda and formal minutes, which shall be agreed with OSP Project Manager and uploaded onto the CWE. The frequency of the progress meetings shall initially be monthly, and then reviewed after 6 months. The content of the meeting is outlined in SOR Annex A, Appendix 1.

**6.4.2** **Progress / Ad-hoc Meetings:**

Progress / Ad-hoc Meetings do not have authority to vary any contractual requirement. In the event that the Contractor considers an instruction or decision may have this effect, the Contractor must advise the OIP Commercial Branch and take no further action on that instruction or decision pending the OIP Commercial Branch response.

**6.4.3 Progress Reports:**

The Contractor shall produce monthly Progress Reports, to be provided to the Authority at the Progress Meetings, and deliver these to OSP Project Manager in soft copy before uploading to the CWE. These reports shall be in line with requirements in SOR Annex A, Appendix 1, including individual task accrual data in the format at SOR Annex A, Appendix 6**.**

**6.5 Quality**

Quality management is a key element of the overall contract. The Contractor shall implement, maintain and document a Quality Management System (QMS) in accordance with ISO 9001:2008/2015, or equivalent i.e. AS9100. The contractor shall be certified to ISO 9001:2008/2015, or equivalent by a UKAS accredited 3rd party certification body. The scope of the Certification shall be appropriate to the requirements of this Contract. Certification shall be maintained throughout the duration of the Contract.

The Contractor shall provide, implement and maintain a Deliverable Quality Plan in accordance with the requirements of Allied Quality Assurance Publication (AQAP) 2105 and DEFCON 602A.

**7 Management of the Contract**

**7.1 Liability / Duty Holder**

The Contractor shall be responsible for ensuring that the correct stakeholder community is engaged. The stakeholder community are responsible for ratifying the publication under request and shall provide their decision to the Contractor. The Authority (OSP Project Manager) is ultimately the Duty holder for the work and shall be named as sponsor on TDOL. However, the Contractor shall be responsible if they have not carried out their duties thoroughly and in accordance with the agreed programme and detail within this SOR.

**7.2 Travel and Subsistence (T&S) associated with tasks**

The Contractor shall include any T&S costs within the firm price offered to amend any publications in the Tasking Proposal. The Contractor shall provide evidence of the reason for the costs and provide a clear breakdown of the extent of travel expected to be undertaken to carry out the work. The amounts claimable for T&S will be defined by the Authority in the contract.

**7.3 Attendance at Meetings**

The Contractor shall attend monthly progress meetings at Authority’s Abbey Wood site with OSP Project Manager as a minimum. The meetings shall initially be held monthly, with the frequency being reviewed six months after the contract start date. The Contractor shall also be required to attend ad-hoc meetings throughout the course of the contract. Meetings are to be scheduled by the Authority’s Project Manager, in agreement with the Contractor. The content of the meetings is outlined in SOR Annex A, Appendix 1.

**7.4 Performance Indicators**

These are to be reported on a Quarterly basis, and reviewed at the Quarterly Progress Meetings. See SOR Annex A, Appendix 4 for details.

**7.5 Reporting**

The Contractor shall compile a monthly report for the Authority, to be issued at Progress Meetings, and present an updated report in tabular form, highlighting the progress to date on on-going publication updates. The progress report shall including individual task accrual data, and be delivered monthly. The deadline for the Contractor to submit monthly accruals shall be agreed with the Authority at the project start-up meeting. Should this date change, the Contractor will be given 10 working days’ notice.. The monthly progress reports are also the Contractor’s opportunity to formally identify or provide updates on hold ups which may or may not need Authority intervention. Reports to be delivered in accordance with Deliverable table at SOR Annex A, Appendix 1.

**7.6 Electronic File Sharing Environment**

The appropriate section of the shared CWE area shall be maintained on a daily basis and should not be more than 5 working days out of date at any time during the duration of the contract.

**7.7 Tasking Capability**

The tasking arrangement shall be used to formally contract for individual publications updates, and to facilitate the procurement of additional activity which is not part of the Contract Start-up or listed elsewhere in this SoR.

**7.8 Government Furnished Authority stakeholder Input**

The Authority is responsible for providing Authority stakeholder input on request from the Contractor.

Note 1: The Contractor is to engage formally with the relevant Stakeholder(s) stating what level of support is requested (this must be through dialogue and supported by written correspondence), and with the associated requested timescales (the timescale must provide a healthy period with which to respond). The Contractor shall provide all relevant information to be reviewed along with a clear and straight forward mechanism to enable the stakeholder to respond. The emphasis is on the Contractor to make the stakeholder involvement within the process as easy as possible. It may be necessary for the Contractor to engage with the stakeholder through face to face interviews.

Note 2: If the stakeholder does not respond within the timeframe specified the Contractor is to hasten a response in writing and keep a record of all such correspondence. If the stakeholder does not respond to the first hastener, the Contractor is expected to send a second hastener again in writing.

Note 3: It is vital that each work stream includes contingency time to facilitate delay in input from stakeholders.

**7.9 Stakeholder engagement hastening support**

OSP ESMs and Project manager will assist in hastening Authority stakeholders (but only once they have formally been hastened by the service provider as detailed above). OSP Project Manager will further be responsible for agreeing the most appropriate way forward should input from stakeholder not be forthcoming. Options will include A. Deliver without stakeholder input. B Cancelation of the work stream, and C Escalating issue to a higher level.

**7.10 Access to UK based equipments where necessary**

OSP Project Manager or relevant ESM shall sponsor any visits to UK Military facilities, should this be necessary to complete any given task. Under normal circumstances the contractor will be responsible for arranging visits and gaining access to sites.

**7.11 Access to TDOL, JAMES and other Authority enabling facilities as necessary**

The Contractor shall be granted access to all enabling facilities where possible. Note: It may only be possible to provide access from a terminal within ABW. To be arranged.

It should be noted that access to the IHS Standardisation information will not be provided and that all information associated with UK legislation and regulation will need to be sought independently.

**8 Support**

**8.1 Response to enquiries**

The Contractor will be expected to provide responses to enquiries raised throughout the duration of the Contract. See point 4.5 - Publication Support above.

Output provided in this area should only be provided when the answers are related to facts which are known, already endorsed, and are in association with existing publications, processes, the fact finding mission, or the overall Programme of work. The Contractor should not be drawn into providing responses or outputs which are based on intension, opinion, speculation etc. All enquires which fall out with this arrangement should be referred back to OSP Project Manager for consideration.

**Annex A, Appendix 1 – Contract Deliverables**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Task** | **Deliverable**  | **Acceptance Criteria** | **GfX** |
| 1. Contract start-up | 1.1. Produce a Communications Plan and a rolling plan of activity. | A Communications Plan document and a rolling plan of activity in both soft and hard copy. Initial plan to be delivered as part of ITT response. | Communications plan assessed as part of ITT response. Rolling plan of activity to be agreed by OSP Project Manager. | Contact information for any known Stakeholders. |
| 1.2 Produce a Final Deliverable Quality Plan. This plan is to be in line with the guidance found at ANNEX B to the DEFFORM47, and to also include (but not be limited to):A record keeping protocol covering the logging, filing and retrieval of information relating to the list of Technical Publications.A Configuration Management Plan / Version Control Plan | Draft Deliverable Quality Plan with ITT response.Final Deliverable Quality Plan within 3 months of contract award. | Contractor to provide a Draft Quality Plan with ITT response.Contractor to provide Final Deliverable Quality Plan (agreed by PgMO Quality Team) that meets the requirements of AQAP 2105 and DEFCON 602A within 3 months of Contract Award. |  |
| 2. Conducting Task Work | 2.1. Present a detailed cost breakdown and programme of activity for each publication requiring amendment.  | Contractor to produce a costed tasking form (TPF Part 2) with programme of activity included, within 10 working days of receipt of the TPF Part 1.  | Publication stakeholders agree to proposal, a suitably detailed Firm priced breakdown is provided and OSP Project Manager is prepared to endorse. |  |
| 2.2. Carry out stakeholder engagement in line with programme of activity to support task delivery | The ultimate deliverable is the new/amended/updated publication.Engagement to be done in a timely fashion in order to meet Task delivery date agreed between Contractor and Authority on the TPF Part 3 | Stakeholder engagement is logged within the audit trail and justification for any decisions taken is provided. | Stakeholder access |
| 2.3. Provide early drafts of publications under review, circulate them to the stakeholder community and discuss and agree any further updates required.  | Draft copies of publications. The ultimate deliverable is the amended/updated publication. Drafts to be provided in time to ensure delivery date in Part 3 is achieved | Draft publications updates are produced in accordance with agreed formatting guidelines (as agreed in the Tasking Form) and in accordance with legislation.  |  |
| 2.4. Produce final draft of updated or amend technical publications and upload to TDOL/JAMES following sign-off. | Final draft delivered in line with date stated on TPF Part 3.Amended/updated publication uploaded to TDOL/JAMES. | Publications updates/amendments are produced in accordance with format guidelines, legislation and stakeholder engagement input as per agreed Tasking Forms. Uploaded to TDOL once Part 4 signed by Authority | Facilitation of access to TDOL/JAMES (if required). |
| 3. Publications Through Life Support | 3.1. Field enquiries against publications and coordinate responses (where applicable). | Up to date electronic enquiry log, enquiries acknowledge within 2 working days. | Enquiry log contains an up to date record of all enquiries raised, the status of the enquiry and relevant dates and times.  |  |
| 3.2. Liaison with LogNEC over issues associated with the capture of OSP sponsored Technical Publications onto Network Enabled Capabilities (where appropriate and agreed between Contractor and Authority). | Records of decisions captured and stored in accordance with the Record Keeping Protocol. | Record Keeping Log demonstrates which (if any) NECs require updating and records details of the updates and the justification. | Access to NECs via DII or other Authority Network. |
| 3.3. Production/input into Kit Articles (to be agreed between Contractor and Authority). | Production of draft Kit Articles for consideration/sign-off to dates agreed between Contractor and Authority | Kit Articles are agreed by relevant stakeholders and OSP Project Manager. | Access to OSP relevant publications. |
| 3.4. Manage the Electronic File Sharing environment for use by OSP ESMs, Project Manager and Authority Stakeholders. | All contract-related documents on the Maritime Collaborative Working Environment (CWE) shall be up to date, in accordance with the specified performance criteria. | The Contract-related documents stored on CWE are kept up to date and contains full and accurate information.  | Access to the OSP space on the Maritime CWE. Documents and files for upload where necessary. DII performance requirements and data where necessary. |
| 4. Contract Management & Feedback | 4.1. Attend and contribute to Progress meetings with the Authority at MOD Abbey Wood Bristol, in support of OSP sponsored technical publications.Monthly Meetings to cover:1. Task Review
2. Safety Issues
3. Quality issues
4. Technical Issues
5. Highlight any issues associated with on-going stakeholder engagement.
6. Highlight any areas of stakeholder opinion conflict, which need to be addressed by the customer.
7. Provide visibility of all stakeholders currently being hastened for a response.
8. Provide visibility of enquires raised since the last progress meeting.

Ad-Hoc Progress Meetings with the Authority:1. Date, content and attendees of meeting to be agreed between Authority and Contractor prior to meeting.
 | Attendance at Progress Meetings:Minutes of meetings and a record of decisions and outcomes to be provided within 5 working daysContractor shall provide current progress reports at the meeting.Attendance at Ad-Hoc Progress Meetings:Minutes of meeting and a record of decisions and outcomes to be provided within 5 working days – if requested by Authority when agreeing meeting.Deliverables to be agreed between Contractor and Authority prior to meeting. | Contractor attends Monthly Progress Meetings at specified intervals, providing a minute-taking facility and producing typed minutes for agreement by OSP Project Manager and uploading to the CWE. Minutes to be provided within 5 working days following meeting. The frequency of the progress meetings will be monthly - this is to be reviewed after 6 months from contract start date. Current progress report provided.Contractor attends Ad-Hoc Progress Meetings. If requested by Authority prior to meeting: Contractor provides a minute-taking facility and produces typed minutes for agreement by OSP Project Manager and uploading to the CWE. Minutes to be provided within 5 working days following meeting. Contractor has provided requested deliverables (if required). |  |
| 4.2 Attend and contribute to Quarterly Progress meetings with the Authority at Abbey Wood, in support of OSP sponsored technical publications.Meeting to cover:1-9. Same as 4.1 (above)1. Performance review to cover KPIs
 | Attendance at Quarterly Progress Meetings.Minutes of meetings and a record of decisions and outcomes to be provided within 5 working daysContractor shall provide current progress reports at the meeting.Contractor shall provide KPI Self-Score 5 working days before meeting. | In addition to the requirements of the Monthly Progress Meeting (4.1), a performance review of KPIs shall be undertaken. |  |
| 4.3. Produce Progress Report.Report to include:An update of any tasks initiated since the previous meeting, and their current status.An update of any tasks that are currently underway, including Confirmation of tasks delivered since the last meeting.Any issues impacting delivery timescalesA list of potential/upcoming tasks | Progress Report, to be provided at the Monthly & Quarterly Progress Meetings | Contractor provides Progress Reports to OSP Project Manager at specified intervals in the agreed format and uploaded to the Shared File Environment..  |  |
| 4.4 Produce Financial Accrual Report | Financial Accrual Report | Contractor provides monthly Financial Accrual Reports to OSP Project Manager.The delivery date will be agreed at project start-up. Should this date change, contractor will be given 10 working days’ notice.Financial Accrual Report to be in the format at Annex A, Appendix 6. |  |
| 4.5 Produce KPI Self-Score. | KPI Scoring | Contractor to provide KPI self score, using template at L4. To be provided to the Authority 5 working days before each Quarterly Progress Meeting |  |
| 4.6 Produce evidence of ISO 9001 certification | A copy of a valid & current ISO 9001 certificate held by the contractor, covering the scope of the contract. Provided as part of ITT response | ISO 9001 shall cover the scope of the contract.  Both ISO 9001:2008 and ISO 9001:2015 will be deemed suitable for demonstrating this certification. If ISO 9001:2008 is supplied, a valid ISO 9001:2015 certificate shall be obtained and submitted no later than Dec 18. |  |
|  | 4.7 Produce ISO 9001 Audit reports when requested | An ISO Audit Report showing relevant ISO Certificate/Accreditation is still held, demonstrating a robust QMS and maintenance of the certification. Report to be produced within 20 working days of request, unless otherwise agreed between Authority and Contractor | Contractor to provide an ISO Audit report to satisfy Quality representative that certification still valid and the scope of the contract is covered. |  |

**Annex A, Appendix 2 – List of OSP Sponsored AESPs** **(Not Extant)**

***(Attached as a separate Excel Spreadsheet –Annex A Appendix 2)***

**20160610-OSP0014\_SOR\_Annex A\_Appendix 2 - ''''''''' Final-OS**

**Annex A, Appendix 3 - Delivery Process**

**The Overview**

**The work to be conducted as part of the service supplier contract can be broken down into five different stages of work initially with stages following on in order. However once the contract is established stages 2, 3, 4 and 5 will all operate in parallel.**

**1. Contract start up**

**3. Conducting Task Work**

**2. Identification of Task Work**

**4. Publications Support**

**5. Contract management and feedback**

**Annex A, Appendix 4 - Performance Indicators**

|  |  |  |
| --- | --- | --- |
| **No** | **Description**  | **Parameter**  |
| 1 | **Task final delivery** | 10% overrun tolerance (i.e. A 100 day delivery programme should not deliver more than 10 days late) |
| 2 | **Overall delivery on time or within tolerance** | 80% of all tasks are to be delivered on time |
| 3 | **Engagement with stakeholder community** | This will be a random sample check of the key stakeholders to assess the quality of engagement with the community, covering the following areas:\* The timeliness of correspondence and provision of a quote\* The professionalism and technical expertise of staff whom were communicated with\* How well the deliverable met the requirements of its content, clarity and credibility (SQEP provided)\* The overall levels of communication and professional conduct |
| 4 | **Supplier provides products that meet Authority standards** | The task outputs will adhere to the “Defence Technical Documentation Guidance” and internal business criteria |
| 5 | **Supplier is consistent is supplying quality products.** | Tasks shall be accepted without the need for re-work, following formal rejection |
| 6 | **Response to enquires** | All enquiries shall be acknowledged within 2 working days. To be reported by exception. |
| 7 | **Meeting minutes** | Contractor to provide minutes within 5 Working days of each meeting  |
| 8 | **Electronic Shared Area maintenance**  | A random check will be conducted to ensure it:\* holds all progress, programmes, engagement records, draft and final issue publications.\* is maintained up-to-date throughout the course of the contract (i.e. Information never more than 5 days out of date.) |
| 9 | **The Contractor is to demonstrate SME against the publications covered within this contract** | The Contractor is to inform the Authority within 1 week of changes to key personnel, maintains as a minimum the skill sets as at contract award and all personnel are to be suitably qualified. |

**Annex A, Appendix 5 - Project Evaluation**

|  |  |  |
| --- | --- | --- |
|  | **Time** | **Theme** |
| 1 | One month after contract let  | Review progress being made against contract set up, and address any issues identified |
| 2 | Two months after contract let. And 1 monthly thereafter  | Review of progress made against tasks placed (evaluation of progress against programme).  |
| 3 | At least every 3 months  | Assess performance of contractor against KPIs |
| 4 | 9 Months prior to contract end | Agree timescales and activities of Exit Management Plan  |
| 5 | 3 months prior to contract end | Review and evaluate actions associated with contract end  |
| 6.  | Final week of contract  | Conduct a close out meeting to exchange information and provide initial feedback on contract progress |
| 7. | One month after contract end | Conduct Post Project Evaluation  |

**Annex A, Appendix 6 – Accruals Evidence Table**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Company: | (Company Name) |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
| Project: | OSP/0014  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
| Reporting Period: | (Date – Date) |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
| **Progress Report** |  |  |  |  |  |  |  |  |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Task Reference** | **Task Description** | **Task Value (ex-VAT)** | **Task Value (inc-VAT)** | **Task** **Start Date** | **Task** **End Date** | **Progress (%)** | **Accrual Value** | **Comments** |
| example:OIP/17/0001 | Update publication XYZ123 | £1,000 | £1,2000 | 1/2/2017 | 1/4/2017 | 50% | £600 | Halfway |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  | **Total** | £600 | On track |

Schedule 6 - Contractor’s Commercially Sensitive Information Form

(i.a.w Condition A14)

|  |
| --- |
| Contract No: OSP/0014  |
| Description of Contractor’s Commercially Sensitive Information:  |
| Cross Reference(s) to location of sensitive information:  |
| Explanation of Sensitivity:  |
| Details of potential harm resulting from disclosure:  |
| Period of Confidence (if applicable):   |
| Contact Details for Transparency / Freedom of Information matters:Name:  Position:  Address:  Telephone Number:  Email Address:   |

Schedule 7 – Pricing Schedule

All prices contained in this Schedule shall be inclusive of all Profit. Overheads (such as travel and subsistence) shall be claimed for tasks in accordance with the Tasking Proposal Form Part 2 (Schedule 8)

Table 1 – Rates

|  |  |
| --- | --- |
| **Resource Description** | **FIRM HOURLY RATE (£ EX VAT)** |
| **FY 16/17**(01/04/2016-31/03/2017) | **FY 17/18**(01/04/2017-31/03/2018) | **FY 18/19**(01/04/2018-31/03/2019) | **FY 19/20**(01/04/2019-31/03/2020) | **FY 20/21**(01/04/2020-31/03/2021) |
| Technical Author |  |  |  |  |  |
| Project Manager |  |  |  |  |  |
| Quality Assurer |  |  |  |  |  |
| Illustrator |  |  |  |  |  |
| Typist |  |  |  |  |  |
| TDOL Updates/Uploads |  |  |  |  |  |
| Safety |  |  |  |  |  |
| Other (Director) |  |  |  |  |  |

Table 2 – Travel and Subsistence

Travel and Subsistence can be claimed in line with current Travel Policy. See below table for rates.

|  |  |
| --- | --- |
| **T&S Type** | **FIRM RATE (£ EX VAT)** |
| UK Hotel per person | Actuals may be claimed upon production of a receipt |
| Daily Subsistence per person | 30 |
| Motor Mileage (per mile)\* | 0.25 |
| Trains and Ferries | Actuals may be claimed upon production of a receipt |

\* If travelling by Hire car, the Contractor must not claim against the Motor Mileage rate. Actual fuel costs incurred using a Hire Car may be claimed upon production of a receipt.

Schedule 8 –Tasking Form

**TASKING PROPOSAL FORM (TPF) – Part One**

**STATEMENT OF WORK**

|  |
| --- |
| Guidance notes: |
| To be completed by the Authority. Identify the task, associated GFX, key supporting information, points of contact and target dates. Must have clear and measurable targets and deliverables/outputs. |
| 1. | To:  |  | From: | The Authority (Insert Name and Address) |
| 2. | Task Title: |  |
|  | Task No: | OIP/OSVP/PMVP(Year – last 2 digits)/Proposal No (3 digits Sequential)  | Revision No: |
| 3. | (Statement of Work attached): |
| See “pick-list” on following page |
|  |
| Target Date for Completion of Work: |  |
| 4a. | Signed ………………..ESM (originator/sponsor)Tel. No ……………….. | Name ………………..(BLOCK CAPITALS)Date ……………….. |
| 4b. | Signed ………………..Project ManagerTel. No ……………….. | Name ………………..(BLOCK CAPITALS)Date ……………….. |

|  |  |
| --- | --- |
| **Item** | **Required (Y/N)** |
| Safety Case Review /Cross check against e-cassandra required? (If yes, ensure view access permissions for contractor are in place) |  |
| Are any outstanding / extant AESP Form 10s to be incorporated? |  |
| Are NSN updates required? (cross-check against VERITAS). |  |
| Are maintenance activities to be updated on JAMES? |  |
| Is a KIT magazine article required? |  |
| Is a draft AESP Cat 111 required? |  |
| Confirm level of illustration required: e.g. screen shots, supplied photos, line art |  |
| Is an editorial review of the whole document / Octad required? (e.g. typos, correct grammar etc.) |  |
| Is Mod Form 374 (Pagination) action required? |  |
| Are amendment pages/instructions required?  |  |
| Is an upload to TDOL required? |  |
| Is a Defence Instruction Notice (DIN) required? |  |
| Are Hard copies required? If so, Indicate number of copies |  |
| Is the task subject to ITAR regulations  |  |
| Are site visits to OEM required for liaison, source data collection (e.g. photographs, drawings, new operating or maintenance procedures). If so, provide information to inform costings. |  |
| **Please also indicate (compulsory information for all TPF Part 1).** |
| If the subject AESP is in the contractor vault on TDOL |  |
| State here who the Publication Sponsor is  |  |
| State here who the Design Organisation is  |  |
| State here the File reference (from the file plan). |  |
| State here the Security classification |  |
| Please confirm if BDSG should be granted access to the AESP |  |
| Principal point of contact  | OEM |
| ESM (or delegate) |
| State here the reviewing stakeholders |  |
| If an existing AESP, state here the AESP Octad number |  |

**TASKING PROPOSAL FORM (TPF) - Part Two**

**TIME / COST QUOTATION**

|  |
| --- |
| To be completed by the Contractor. Provide a cost breakdown by grade/activity per man hour. Where the task spans more than one Financial Year (FY) please provide the cost breakdown per FY (1st April to 31st March).Statement by the Contractor: A Cost/Time quotation is provided in Section 3 below in respect of Tasking No …………… On the basis of current programme planning the resources defined in Section 3 are available for the period shown without conflict with existing commitments. **This is a Firm Price**. |
| 1. | Task No: | Revision No: | Quote Expiry Date: |
| 2. | Assumed start date: | Completion date: |
| 3. | COST (Ex VAT): |  |
| a. | Man Hour / Days (Firm man day rates inclusive of profit & overheads in accordance with the man hour / day rate agreed at Schedule 7 to the Contract.(Any additional breakdown should be attached separately) |
| 1 | Technical Author |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| 2 | Project Manager |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| 3 | Quality Assurer |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| 4 | Illustrator |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| 5 | Typist |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| 6 | TDOL Updates/Uploads |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| 7 | Safety |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| 8 | Other (Director) |
| No. of man hours………… | Rate Per Hour£…………….. | Total£…………… |
| b. | Material/Subsistence/SMEs:(If required additional breakdown attached separately) | Total £…………… |
| c. | TOTAL FIRM PRICE (Ex VAT): | £ ………………………… |
| 4. | Dependencies:  |
| 5. | Signed (Contractor): |  |
|  | Name: |  |
|  | Date: |  |

Copy to: Originator, Project Manager, Commercial Officer

**PROPOSAL FORM (TPF) - Part Three**

**CUSTOMER AUTHORISATION/CANCELLATION**

|  |  |  |
| --- | --- | --- |
| 1. | Task No: | Revision No: |
| 2. | a. | \*Please proceed with the work to the total cost of £……………(Firm Price) as quoted in Section 3 of Tasking Proposal Form Part 2 dated………….All work to be completed by (Date)……………. |
|  |  |  |
|  | b. | \*Please provide a **revised** time/cost quotation for Task No………..using the Form at Schedule 8 to Contract. |
|  |  |  |
|  | c. | \* Please amend the proposal as detailed |
|  |  |  |
|  | d. | \*Please take no further action. |
|  |  |  |
|  | \* Delete as appropriate |
|  |  |  |  |
| 3. | **a.** | Signed:………………………. | Name…………………………….. |
|  |  | **ESM (Originator/Sponsor)** | (BLOCK CAPITALS) |
|  |  |  |  |
|  |  | Tel. No……………………….. | Date………………………………….. |
|  |  |  |  |
|  | **b.** | Signed……………………….. | Name…………………………….. |
|  |  | **Commercial Officer** | (BLOCK CAPITALS) |
|  |  |  |  |
|  |  | Tel. No……………………….. | Date………………………………….. |
|  |  |  |  |
|  | **c.** | Signed……………………….. | Name…………………………….. |
|  |  | **Finance Officer (PSS Approved)** | (BLOCK CAPITALS) |
|  |  |  |  |
|  |  | Tel. No……………………….. | Date………………………………….. |
|  |  | **UIN:** | **BLB:** | **LPC (S9/P9):** |
|  |  |  |  |
|  | **d.** | Signed……………………….. | Name…………………………….. |
|  |  | **Project Manager** | (BLOCK CAPITALS) |
|  |  |  |  |
|  |  | Tel. No……………………….. | Date………………………………….. |

Copy to: Originator, Project Manager, Commercial Officer, Contractor

**PROPOSAL FORM (TPF) - Part Four**

**CUSTOMER CONFIRMATION OF TASK COMPLETION**

|  |  |  |
| --- | --- | --- |
| 1. | Task No: | Revision No: |
| 2. | I confirm on behalf of the Authority that the agreed work associated with the above task number has been completed and delivered inline with the contract terms and conditions and statement of work and has been ratified by the necessary stakeholders. |
| 3. | Comments (LFE):  |
| 4. |  |  |
|  | Task Completion AcceptedSigned:………………………. | Name…………………………….. |
|  | **ESM (Originator/Sponsor)** | (BLOCK CAPITALS) |
|  |  |  |
|  | Tel. No……………………….. | Date………………………………….. |
| 5. | Receipted by: |  |
|  | Signed:………………………. | Name…………………………….. |
|  |  | (BLOCK CAPITALS) |
|  |  | Date………………………………….. |

Copy to: Contractor, Project Manager, Commercial Officer, Finance.

**Schedule 9- DEFFORM 30**

|  |
| --- |
| **THE ELECTRONIC TRANSACTIONS AGREEMENT****Between****XXXXX****And****SECRETARY OF STATE FOR DEFENCE****MINISTRY OF DEFENCE****Electronic Transactions Agreement**THIS AGREEMENT comprises the General Clauses for electronic transactions.The terms of this Agreement shall govern the conduct and methods of operation between the parties in relation to the electronic exchange of data for the purposes of or associated with the supply of Contractor Deliverables pursuant to those contracts which reference it. Except as otherwise provided in the appended terms, the terms do not apply to the substance of the data transfer. This Agreement shall have the date of and be effective from the date of the last signature hereunder.**AGREED**  |
| For and on behalf of: | For and on behalf of: |
|  | **Secretary of State for Defence** |
|  |  |
| Signature: |  |  | Signature: |  |  |
|  |  |  |  |  |  |
| Name: |  |  | Name: |  |  |
|  |  |  |  |  |  |
| Position: |  |  | Position: |  |  |
|  |  |  |  |  |  |
| Date: |  |  | Date: |  |  |
|  |  |  |  |  |  |
| Whose Registered Office is at: | Whose Address is: |
|  |  |  |  |
|  |  |  |  |
| Agreement reference number: | **OSP/0014** |

|  |
| --- |
| **Contents****Electronic Transactions****General Clauses** |
| **CLAUSE 1** | Definitions |
| **CLAUSE 2** | Scope |
| **CLAUSE 3** | Security of Data |
| **CLAUSE 4** | Authenticity of Messages |
| **CLAUSE 5** | Integrity of Messages |
| **CLAUSE 6** | Acknowledgement of Receipt of Messages |
| **CLAUSE 7** | Storage of Data |
| **CLAUSE 8** | Intermediaries |
| **CLAUSE 9** | Term and Termination |
| **CLAUSE 10** | Interruption of Service |
| **CLAUSE 11** | Invalidity and Severability |
| **CLAUSE 12** | Notices |
| **CLAUSE 13** | Precedence |
| **CLAUSE 14** | Virus Control |
| **CLAUSE 15** | Limit of Liability |
| **CLAUSE 16** | Entire Agreement |
|  |  |
| **Annex A**  | Message Implementation Guidelines (MIGs) and additional requirements and information applicable to this Agreement |

### **Definitions**

* 1. In this Agreement, in addition to the definitions in DEFCON 501 (or Schedule 1 of Standardised Contracting Templates 2 (SC2) or 3 (SC3)):
		1. "**Acknowledgement of Receipt**" means the procedure by which, on receipt of a Message, the logical presentation or form are checked, and a corresponding acknowledgement or rejection is sent by the receiver;
		2. "**Adopted Protocol**" means the method(s) for the Interchange of Messages between the respective Parties and an intermediary appointed pursuant to Clause 8 for the presentation and structuring of the transmission of Messages as defined in Annex A
		3. "**Associated Data**" means that data which accompanies a Message but may not be in the Adopted Protocol; such data may include header information, protective markings, designations, Electronic Signatures, date and time of transmission and of receipt;
		4. "**Data**" means all Messages and Associated Data transmitted, received or stored in a digital form;
		5. "**Data File**" means a single record or collection of data records that are logically related to each other, and are handled as a unit;
		6. "**Data Log**" means a complete record of all Data Interchanged representing the Messages and their Associated Data between the parties;
		7. **"Purchase to Payment Gateway" or “ePurchasing”** mean the service provided by the party under contract to the Authority to manage the electronic receipt, transmission and translation of messages exchanged between the Authority and its suppliers;
		8. "**Electronic Signature**" means anything in electronic or digital form incorporated into or otherwise logically associated with an electronic communication for the purpose of establishing the authenticity of the communication or its integrity, or both;
		9. "**Expunge**" means the removal of the information contained in a Message document such that the content of the Message is removed from the system in a manner which precludes its retrieval (but with no obligation in respect of the record of its receipt);
		10. **“Functional Acknowledgement”** means an acknowledgement Message by the receiving party’s computer software application which automatically confirms the receipt of a Message at the moment of receipt;
		11. "**Interchange**" means the electronic exchange of Data between the Parties using the Adopted Protocol;
		12. "**Message**" means Data structured in accordance with the Adopted Protocol and transmitted electronically between the parties including where the context admits any part of such Data.
1. **Scope**
	1. The Messages to be exchanged under this Agreement are detailed in the Message Implementation Guidelines referred to in Annex A, which also includes guidance on how these should be profiled.
	2. This Agreement shall apply to all Messages passed between the parties using the Adopted Protocol. The parties agree that all such Messages shall be transmitted in accordance with the provisions of this Agreement.
	3. The parties may agree additional or alternative terms to reflect additional or different requirements which they may have for the Interchange of Messages, which terms shall form part of this Agreement.
2. **Security of Data**
	1. Each of the parties shall:
		1. ensure as far as reasonably practicable, that Data is properly stored, is not accessible to unauthorised persons, is not altered, lost or destroyed and is capable of being retrieved only by properly authorised persons;
		2. subject to the provisions of Sub-Clause 8.a. ensure that, in addition to any security, proprietary and other information disclosure provision contained in the Contract, Messages and Associated Data are maintained in confidence, are not disclosed or transmitted to any unauthorised person and are not used for any purpose other than that communicated by the sending party or permitted by the Contract;
		3. protect further transmission to the same degree as the originally transmitted Message and Associated Data when further transmissions of Messages and Associated Data are permitted by the Contract or expressly authorised by the sending party.
	2. The sending party shall ensure that Messages are marked in accordance with the requirements of the Contract. If a further transmission is made pursuant to Sub-Clause 3. a. iii. the sender shall ensure that such markings are repeated in the further transmission.
	3. The parties may apply special protection to Messages by encryption or by other agreed means, and may apply designations to the Messages for protective Interchange, handling and storage procedures. Unless the parties otherwise agree, the party receiving a Message so protected or designated shall use at least the same level of protection and protective procedures for any further transmission of the Message and its Associated Data for all responses to the Message and for all other communications by Interchange or otherwise to any other person relating to the Message.
	4. If either party becomes aware of a security breach or breach of confidence in relation to any Message or in relation to its procedures or systems (including, without limitation, unauthorised access to their systems for generation, authentication, authorisation, processing, transmission, storage, protection and file management of Messages) then it shall immediately inform the other party of such breach. On being informed or becoming aware of a breach the party concerned shall:
		1. immediately investigate the cause, effect and extent of such breach;
		2. report the results of the investigation to the other party;
		3. use all reasonable endeavours to rectify the cause of such breach.
	5. Each party shall ensure that the contents of Messages that are sent or received are not inconsistent with the law, the application of which could restrict the content of a Message or limit its use, and shall take all necessary measures to inform without delay the other party if such an inconsistency arises.
3. **Authenticity of Messages**
	1. Each Message shall identify the sending party and receiving party and its authenticity shall be verified by the means specified in the Adopted Protocol.
	2. The parties agree not to contest the authenticity, admissibility or enforceability of Messages under the provisions of any applicable law relating to whether certain agreements are in writing and signed by the party to be bound thereby. Messages, when printed from electronic files and records established and maintained in the normal course of business will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form.
4. **Integrity of Messages**
	1. The sending party shall ensure as far as is reasonably practicable that all Messages are complete, accurate and secure against being altered in the course of transmission and, subject to Sub-Clauses 5.b. 5.d. and 15, shall be liable for the direct consequences of any failure to perform its obligations under this Sub-Clause 5.a.
	2. Each party will accord all Messages the same status as would be applicable to a document or to information sent other than by electronic means, unless a Message can be shown to have been corrupted as a result of technical failure on the part of a machine, system or transmission line involved in the process of Interchange.
	3. Upon either party becoming aware that a Message has been corrupted or if any Message is identified as incorrect then that party shall inform the other and the sending party shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. Any liability of the sending party which would otherwise accrue from its failure to comply with the provisions of this Sub-Clause 5.c. shall not accrue if Sub-Clause 5.d. applies.
	4. Notwithstanding Sub-Clauses 5.a. and 5.c. the sending party shall not be liable for the consequences of a corrupted or incorrect transmission or any failure to re-transmit if the error is or should in all the circumstances be reasonably obvious to the receiving party. In such event the receiving party shall immediately notify the sending party thereof.
	5. If the receiving party has reason to believe that a Message is not intended for them they shall notify the sending party and if so requested by the sending party shall, so far as is reasonably possible, Expunge from its system the information contained in such Message.
5. **Acknowledgement of Receipt of Messages**
	1. Except where the Interchange of Messages takes place solely within ePurchasing, immediately upon receipt of a Message at its receipt computer, the receiving party’s receipt computer shall automatically transmit a Functional Acknowledgement in return and additionally the sender may request an Acknowledgement of Receipt.
	2. An Acknowledgement of Receipt is required unless stipulated in the Contract to the contrary.
	3. Where an Acknowledgement of Receipt is required, the receiver of the Message to be acknowledged shall ensure that the acknowledgement or a rejection is sent within the time limit specified in the Contract or in Annex A to this Agreement if applicable or, if no limit is specified, within a reasonable period of time.
	4. Where an Acknowledgement of Receipt is required, if the sender does not receive the Acknowledgement of Receipt or rejection within the time limit applicable, or, if no time limit is specified, within a reasonable time, the sender may, upon giving notice to the receiver, treat the message as having no force or effect.
	5. Acknowledgement in accordance with this clause shall not be deemed to constitute acceptance of any offer contained in any Message. Acceptance of an offer contained in any Message which is intended to create a legally binding obligation shall be in accordance with the provisions of the Contract.
	6. A Message shall be understood to have been received from the sender:
		1. if transmitted between 09.00 and 17.00 hours on a business day (recipient’s time) on receipt by the sender of a Functional Acknowledgement; or
		2. if transmitted at any other time, at 09.00 on the first business day (recipient’s time) on receipt by the sender of a Functional Acknowledgement; or
		3. if the Interchange of Messages takes place solely within ePurchasing, at the moment a Message is completed by pressing the submit button if transmitted between 09.00 and 17.00 hours on a business day (recipient’s time) or if transmitted at any other time, at 09.00 on the first business day (recipient’s time).
6. **Storage of Data**
	1. Each party shall maintain a Data Log or shall cause an intermediary to maintain a Data Log recording all Messages and Associated Data as sent and received without modification.
	2. The Data Logs may be maintained as Data Files on computer or by other suitable means provided that a copy of the Data can be readily retrieved and presented in human readable form. Procedures to enable a secure means of archiving Data Logs shall be detailed in the Contract or agreed between the parties.
	3. Each party shall be responsible for making such arrangements as may be necessary for the Data contained in its Data Log to be prepared as a correct record of the Messages and Associated Data as sent or received by that party. In the event that a party has destroyed its Data Log, the other party shall have no obligation to furnish it with any information recorded in its Data Log.
	4. Each party shall ensure that:
		1. it has appointed an identifiable person responsible for the operation and management of that party’s data processing system concerned with the interchange of Messages; and
		2. the person responsible for the data processing system concerned with the Interchange of Messages, or such other person as may be agreed by the parties or required by law, shall certify that the Data Log and any reproduction made from it is correct and complete.
7. **Intermediaries**
	1. Subject to Clause 15 if either party uses the services of an intermediary to transmit, log, store or process Messages, that party shall be responsible for any acts, failures or omissions by that intermediary in its provision of the said services as though they were his own acts, failures or omissions. The Authority shall be liable as between the Authority and the Contractor for any acts, failures or omissions of ePurchasing in its provision of the services of an intermediary as though they were the acts, failures or omissions of the Authority.
	2. Any party using an intermediary shall ensure that it is a contractual responsibility of the intermediary that no change in the substantive data content of the Messages to be transmitted is made and that such Messages are not disclosed to any unauthorised person.
8. **Term and Termination**
	1. This Agreement shall take effect as of the date of last signature and shall remain in full force and effect until terminated by either party upon giving one month’s notice to the other. Any termination of this Agreement shall not affect contracts that call it up by reference prior to that termination.
	2. Notwithstanding termination for any reason, Clauses 3, 7 and 8 shall survive termination of this Agreement.
	3. Termination of this Agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination.
9. **Interruption of Service**
	1. The parties acknowledge that service may be interrupted at times during the course of this Agreement. In such circumstances, the parties shall immediately consult each other on the use of alternative forms of communication to be used, including facsimile, telephone or paper. Any alternative forms of communication shall not be controlled by this Agreement.
	2. Applicable only in the absence of a relevant clause in the Contract:
		1. Subject to Sub-Clause 10. a., a party shall not be deemed to be in breach of this Agreement by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any interruption of service or incident of Force Majeure as described in Sub-Clause 10.b.iii. below, of which he has notified the other party without delay
		2. The time for performance of that obligation shall then be extended accordingly. Sub-Clause 10. b. i. shall not operate so as to relieve liability for any matter which is a breach of Clause 3 of this Agreement
		3. For the purposes of this Agreement, Force Majeure means, in relation to either party, any circumstances beyond the reasonable control of that party.
10. **Invalidity and Severability**

In the event of a conflict between any provision of this Agreement and any law, regulation or decree affecting this Agreement, the provisions of this Agreement so affected shall be regarded as null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree but otherwise it shall not render null and void other provisions of this Agreement.

1. **Notices**

The provisions of DEFCON 526 (or Condition H3 if you are using SC2 / SC3) shall apply.

1. **Precedence**

In the event of any conflict between the terms of this Agreement and the Contract, then the terms of the Contract shall prevail in relation to the substance of the Messages in connection with the Contract.

1. **Virus Control**

Each party and its intermediary (if any) shall operate at all times a virus control check for all Interchange of Messages.

1. **Limit of Liability**
	1. Each party agrees that, in relation to any claim, or series of connected claims, including claims for negligence but excluding claims resulting from wilful misconduct, arising from any delay or omission or error in the electronic transmission or receipt of any message pursuant to this Agreement, the liability of either party to the other shall be limited to £10,000 (exclusive of VAT), or where the Contract provides otherwise, to such other amount as is specified in the Contract.
	2. For the avoidance of doubt, liability in relation to any claim arising under the Contract shall be determined in accordance with the Contract.
	3. In the event that a delay, omission or error as referred to in Clause 15a occurs, which causes a delay in the performance of an obligation by either party under the Contract, the period for the performance of that obligation by the affected party shall be extended by a period of time equal to the period of any such delay, omission or error.
2. **Entire Agreement**

This Agreement, including Annex A and any documents expressly referred to in this Agreement, represents the entire agreement between the parties and supersedes all other agreements oral or written, and all other communications between the parties relating to the subject matter hereof provided that nothing in this Clause shall exclude any liability for fraudulent misrepresentation.

**Message Implementation Guidelines (MIGs)**

The current and applicable MIG as approved by the MOD within this agreement can be viewed on the D2BTrade Website: http://www.d2btrade.com.