

Ministry of Defence

Acceptance of Offer of Contract

To: SimCentric Limited

We acknowledge receipt of your Authority's Letter of Offer, reference **701549399** dated **14 June 2021**, with associated documents and confirm that we accept the offer contained therein. We understand that by accepting the Authority's offer, we are entering into a legally binding Contract. We agree that any other terms and conditions or any general reservations, which may be printed on any of our correspondence in connection with this work, shall not be applicable to the Contract. We confirm that we are proceeding with the work.

We agree that the Contract shall be subject to English Law (DEFCONs 529 and 530) unless we tick a preference for Scots Law (DEFCONs 529a and 530a).

Offer and Acceptance																					
A) Offer Contract 701549399 constitutes an offer by the Authority for the supplier to supply the Deliverables. This is open for acceptance by the supplier until 28 June 2021 . By signing below the Contractor agrees to be bound by the attached Contract terms and conditions. Signed by: Keiran Jones Name (Block Capitals): KEIRAN JONES Position: COMMERCIAL MANAGER For and on behalf of the Authority Authorised Signatory: Keiran Jones Date: /06/2021	B) Acceptance of Offer of Contract I acknowledge receipt of the Authority's Contract letter reference 701549399 . I confirm that I accept the Offer it contains and agree to be bound by its terms. Signed by: Name (Block Capitals): Position: For and on behalf of Authorised Signatory: Date ¹ :																				
C) Scots law to apply? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>																					
D) Tier 1 Sub-Contractor data: ² <table border="0"> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> </table>		Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No
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¹ The date of unqualified acceptance by signature is the effective date of the Contract

² The MOD is required to report to the Government any spend with Small and Medium-sized Enterprises (SMEs) including Sub-contractors (Tier 1). SMEs are defined by the EU on <http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/>

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The below schedules are taken from the TRON ITT and the supplier's response pack which form the contract. It is copied here for convenience.

Schedule 1 - Definitions of Contract

Articles	means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (This definition only applies when DEFCONs are added to these Conditions);
Authority	means the Secretary of State for Defence acting on behalf of the Crown;
Authority's Representative(s)	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of condition 8;
Business Day	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
Central Government Body	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">a. Government Department;b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c. Non-Ministerial Department; ord. Executive Agency;
Collect	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;
Commercial Packaging	means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)
Conditions	means the terms and conditions set out in this document;
Consignee	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
Consignor	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Amendments to Contract);
Contract Price	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.

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Contractor	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
Contractor Commercially Sensitive Information	means the Information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
Contractor Deliverables	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;
Control	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none">a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; orb. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor; <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
CPET	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy
Crown Use	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
Dangerous Goods	<p>means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:</p> <ul style="list-style-type: none">a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);d. International Maritime Dangerous Goods (IMDG) Code;e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;f. International Air Transport Association (IATA) Dangerous Goods Regulations.
DBS Finance	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
DEFFORM	means the MOD DEFFORM series which can be found at https://www.aof.mod.uk ;
DEF STAN	means Defence Standards which can be accessed at https://www.dstan.mod.uk ;
Deliver	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;

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Delivery Date	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;
Denomination of Quantity (D of Q)	means the quantity or measure by which an item of material is managed;
Design Right(s)	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
Diversion Order	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
Effective Date of Contract	means the date specified on the Authority's acceptance letter;
Evidence	means either: a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
Firm Price	means a price (excluding VAT) which is not subject to variation;
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Government Furnished Assets (GFA)	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
Independent Verification	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
Information	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
Issued Property	means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;
Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;

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Legislation	means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
Military Level Packaging (MLP)	means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
Military Packager Approval Scheme (MPAS)	is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
Military Packaging Level (MPL)	shall have the meaning described in Def Stan 81-041 (Part 1);
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Notices	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Primary Packaging Quantity (PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> a. pre-consumer reclaimed wood and wood fibre and industrial by-products; b. post-consumer reclaimed wood and wood fibre, and driftwood; c. reclaimed timber abandoned or confiscated at least ten years previously; it excludes sawmill co-products;
Safety Data Sheet	has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);
Schedule of Requirements	means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and

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dates involved and the price or pricing terms in relation to each Contractor Deliverable;

Short-Rotation Coppice

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

Specification

means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);

STANAG 4329

means the publication NATO Standard Bar Code Symbolologies which can be sourced at <https://www.dstan.mod.uk/faqs.html>;

Subcontractor

means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;

Timber and Wood-Derived Products

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

Transparency Information

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

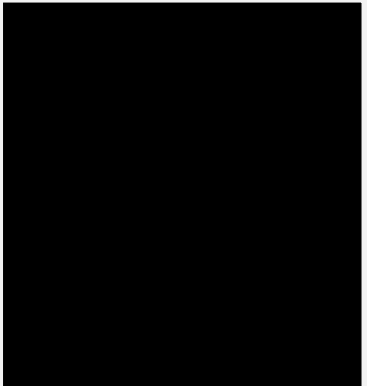
Virgin Timber

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

DEFFORM 10

(Edn 07/18)

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Schedule 2 – Schedule of Requirements

Deliverables									
Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code	Packaging Requirements inc. PPQ and DofQ	Delivery Date (estimated dates to be confirmed on contract award)	Total Qty	Firm Price (£) Ex VAT	
								Per Item	Total inc. packaging (and delivery)
1		SAF-TAC Bundle	Provision of VR trainer, control system, instructions and safety documents, and warranty	XY	00	10 Jan 22	1		
2		3D Content	Software and model development of scenarios and geographies	XY	00	10 Jan 22	1		
3		Training	Provision of training and initial setup	XY	00	Jan 22	Up to 3		
4		Support and Updates	Technical support	XY	00	For one year from delivery date 10 Jan 22	1		
								Total Firm Price	£91,666.00

Item Number	Consignee Address (XY code only)
1, 2, 3, 4,	Hamworthy Camp, Poole BH15 4NQ

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Schedule 4 - Contract Change Control Procedure
(i.a.w. clause 6.b)

1. Authority Changes

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

2. Notice of Change

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

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

3. Contractor Change Proposal

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

b. The Contractor Change Proposal shall include:

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

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

4. Contractor Change Proposal – Process and Implementation

a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

- (1) evaluate the Contractor Change Proposal;
- (2) where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

- (1) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Amendments to Contract); or
- (2) serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing

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(where issued) the Authority Notice of Change.

- c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.
- d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b.(1) above.

5. Contractor Changes

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

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Schedule 5 – Contractor's Commercially Sensitive Information
Form
(i.a.w. condition 13)

ITT Ref No: 701549399

Description of Tenderer's Commercially Sensitive Information:

Descriptions of SimCentric internal processes and product/capability

Cross Reference(s) to location of sensitive information in Tender:

Answers to ITT Questions A1-10, B1-9, C1-6 and D1

Explanation of Sensitivity:

CONFIDENTIAL INFORMATION

Details of potential harm resulting from disclosure:

Commercial confidentiality

Period of Confidence (if applicable): DURATION OF CONTRACT

Contact Details for Transparency / Freedom of Information matters:

Name: Simon Leng

Position: VP - Sales

Address: 264 Banbury Road, Oxford, Oxfordshire, England, OX2 7DY

Telephone Number: 07768 975676

Email Address: Simon.leng@simct.com

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Schedule 8 - Acceptance Procedure (i.a.w. condition 29)

Please refer to Schedule 2 (Schedule of Requirements) for breakdown of items.

The Authority will test the system on 1 Dec 21 at the Contractor's facility before taking acceptance of delivery on 10 Jan 22. The system should match the specification set out in the tender pack.

If issues arise due to not matching the required specification and as a result the first console cannot be delivered on 10 Jan 22, a rectification plan will be submitted to the Authority with new estimated dates.

Delivery Timetable

Delivery Date DD/MM/YYYY	Number of systems
10/01/2022	1

The Authority and Contractor will discuss delivery of the console and location throughout this period.

If delivery is late, payment of console will be retained until delivery.

The system **must** be delivered before the end of financial year, 31 March 2022. The Authority reserves the right to terminate the contract if this final date is not met, with no liability to pay.

Warranty

Each system is to have a 1-year warranty. If a console breaks or does not work, it is expected to be repaired or replaced within a week.

Support

The console operating system must remain current and updated throughout the life of the support arrangements.

Clear English support is required during working hours for year 1. Technical advice should be made available, with next working day follow-up.

Failure to provide technical assistance 3 times in the contract year shall result in a 10% price deduction in the support cost. This includes failure to provide, and/or insufficient technical advice, due to the contractor's personnel being unqualified for providing quality assistance.

For continued and excessive failure in support, the Authority reserves the right to terminate contract, but maintain the warranty. The preference is to resolve with rectification plan.

Schedule 9 – Statement of Requirements

Project TRON - Virtual Reality coaching and mentoring tool for MAB commanders to assist in complex decision making.

1. *The Virtual Reality (VR) coaching and mentoring simulator draws on industry leading technology to enable rapid improvements in command preparedness for dealing with uncertainty, complex environments and multi-faceted problems, potentially saving lives and improving operational efficiency. "There is a real need for this tool to develop subordinates, encourage organic command training and demonstrate how this technology can change the way we train for complexity." – Senior Troop Commander MAB6*

2. **Problem:** There are fleeting opportunities to test and develop command structures within Squadrons. Therefore commanders are not exposed to the problems they will face within their roles and responsibilities.

3. **Solution:** Virtual Reality providing an immersive and intuitive simulation to provide realistic environments for commanders to test decisions, learn roles and responsibilities and provide an organic command training tool.

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4. This SOR is deliberately light on detail and the project manager does not want to limit contractors' thinking. The over-arching intent is to replicate the cognitive overload that faces a Team Leader when they land on the ground on their first mission. Replicating the stresses and inputs of this situation on VR and allowing the OC to test and coach is the crux of this project. Allowing commanders to balance risk, make decisions and most importantly, fail, in order to learn lessons unlocks the training benefit.

Contract start date and duration

5. Contract to start as soon as possible with delivery to the Unit by 10 Jan 21. Support/maintenance contract to start from first delivery and continue for 1 year with an option to continue for a further 5 years to be paid annually.

Security considerations

6. MAB tactics are SECRET. The system must be OFFICIAL SENSITIVE. The tendered solution must walk the fine line of realism and MAB-relevancy while remaining firmly at Official Sensitive. This means:

- a. The user should be placed in a realistic scenario in a realistic environment but the scenario cannot lead to direct or otherwise deductions about MAB missions and tactics.
- b. The feeds coming into the user which are normally at SECRET (eg. Joint Tactical Air Controller JTAC communications) must be cleansed of those pieces of information which are at SECRET (eg. Weapons ranges and capabilities).
- c. The user should be free to act in the environment with usual tactics which are at SECRET. Therefore, the system cannot record any user activity at SECRET.

7. Consoles maintained in lockable classrooms with all hardware mustered on a weekly basis.

8. Requirement to provide at least 1 standalone VR training system of headset and controls for trainee; a laptop control system for the trainer and; a monitor to display.

Specification

9. All deliverables are to be IAW DMaSC rules 1 – 10 contained in JSP 939 Part 2. Note tender evaluation question A-4. JSP 939 is publicly available online and comes up on a google search.

10. The code behind the product should be available to MOD coders who could then develop their own scenarios within the MAB use case. Accessible code and the use of a common engine (particularly Unreal) is desirable.

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**MOD Terms and Conditions for Less
Complex Requirements
(£122,979 - £378,660)**

1 Definitions - In the Contract:

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

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

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

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

Contractor Commercially Sensitive Information means the information listed as such in the Contract, which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

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

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

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

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

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

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

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

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

2 General

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

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

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

- (1) the terms and conditions;
- (2) the schedules; and
- (3) the documents expressly referred to in the agreement.

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

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

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

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

3 Application of Conditions

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

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

4 Disclosure of Information

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

5 Transparency

a. Subject to Clause 5.b, but notwithstanding Clause 4, 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 5.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, including the Contractor Commercially Sensitive Information.

c. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 5.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision

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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 Clause 5 shall affect the Contractor's rights at law.

6 Notices

a. A Notice served under the Contract shall be:

- (1) in writing in the English language;
- (2) authenticated by signature or such other method as may be agreed between the Parties;
- (3) sent for the attention of the other Party's representative, and to the address set out in the Contract;
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the Contract, by electronic mail.

b. Notices shall be deemed to have been received:

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

7 Intellectual Property

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

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

c. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

8 Supply of Contractor Deliverables and Quality Assurance

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

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

c. The Contractor shall ensure that the Contractor Deliverables:

- (1) correspond with the specification;

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

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

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

9 Supply of Data for Hazardous Contractor Deliverables

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

- (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
- (2) the International Maritime Dangerous Goods (IMDG) Code;
- (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
- (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

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

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

- (1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and
- (2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at Clause 9.d, which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

d. Safety Data Sheets if required under Clause 9.c shall be provided in accordance with the REACH Regulations (EC) No 1907/2006 and any additional information required by the Health and Safety at Work etc. Act 1974 and shall contain:

- (1) information required by the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 or any replacement thereof; and
- (2) where the Hazardous Contractor Deliverable is, contains or embodies a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any isotope); and
- (3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed.

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

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- f. Nothing in this Clause 9 reduces or limits any statutory or legal obligation of the Authority or the Contractor.
- g. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

10 Delivery / Collection

- a. The Contract shall specify whether the Contractor Deliverables are to be delivered to the consignee by the Contractor or collected from the consignor by the Authority.
- b. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.
- c. The Authority shall be deemed to have accepted the Contractor Deliverables within a reasonable time after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

11 Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Contract, or if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in the schedule of requirements.
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

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

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

13 Progress Monitoring, Meetings and Reports

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

14 Payment

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 14b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 14a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 14b and there is undue delay in considering and verifying the invoice,

the invoice shall be regarded as valid and undisputed for the purpose of clause 14c after a reasonable time has passed.

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

15 Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to Clause 15.a the dispute shall be referred to arbitration and shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

16 Termination for Corrupt Gifts

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

- a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (or anyone acting on its behalf or any of its or their employees):
 - (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (2) commits or has committed any prohibited act or any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;
 - (3) has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- b. In exercising its rights or remedies to terminate the Contract under Clause 16.a. the Authority shall:
 - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
 - (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;

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

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

17 Material Breach

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

18 Insolvency

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

19 Limitation of Contractor's Liability

a. Subject to Clause 19.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).

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

(1) for:

- a. any liquidated damages (to the extent expressly provided for under this Contract);**
- b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor's failure to perform or under-perform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under this Contract);**
- c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;**
- d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;**

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

(3) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;

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

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

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

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

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

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

DEFCON 014

DEFCON 014 (Edn. 09/20) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

DEFCON 015 (02/98)

DEFCON 015 (Edn. 02/98) - Design Rights and Rights to Use Design Information

DEFCON 021 (10/04)

DEFCON 021 (Edn. 10/04) - Retention of Records

DEFCON 076 (SC1)

DEFCON 076 (SC1) (Edn. 12/16) - Contractor's Personnel at Government Establishments

DEFCON 090

DEFCON 090 (Edn. 11/06) - Copyright

DEFCON 091

DEFCON 091 (Edn. 11/06) - Intellectual Property Rights in Software

DEFCON 113

DEFCON 113 (Edn. 02/17) - Diversion Orders

DEFCON 502 (SC1)

DEFCON 502 (SC1) (Edn. 12/16) - Specifications Changes

DEFCON 503 (SC1)

DEFCON 503 (SC1) (Edn. 12/16) - Formal Amendments To Contract

DEFCON 524A (SC1)

DEFCON 524A (SC1) (Edn. 08/20) – Counterfeit Materiel

DEFCON 531 (SC1)

DEFCON 531 (SC1) (Edn. 06/17) - Disclosure of Information

DEFCON 532A

DEFCON 532A (Edn. 04/20) -Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 532A (SC1)

DEFCON 532A (SC1) (Edn. 08/20) – Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 534

DEFCON 534 (Edn. 06/17) - Subcontracting and Prompt Payment

DEFCON 537

DEFCON 537 (Edn. 06/02) - Rights of Third Parties

DEFCON 538

DEFCON 538 (Edn. 06/02) - Severability

DEFCON 539

DEFCON 539 (Edn. 08/13) - Transparency

DEFCON 566

DEFCON 566 (Edn. 12/18) - Change of Control of Contractor

DEFCON 602B

DEFCON 602B (Edn. 12/06) - Quality Assurance (Without Deliverable Quality Plan)

DEFCON 608

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DEFCON 608 (Edn. 10/14) - Access and Facilities to be
Provided by the Contractor

DEFCON 609 (SC1)
DEFCON 609 (SC1) (Edn. 08/18) - Contractor's Records

DEFCON 624 (SC1)
DEFCON 624 (SC1) (Edn. 12/16) - Use of Asbestos

DEFCON 627
DEFCON 627 (Edn. 12/10) - Quality Assurance - Requirement
for a Certificate of Conformity

DEFCON 658 (SC1)
DEFCON 658 (SC1) (Edn. 11/17) - Cyber

DEFCON 660
DEFCON 660 (Edn. 12/15) - Official-Sensitive Security
Requirements

DEFCON 658 - Cyber Risk Profile - Low
Note: Further to DEFCON 658 the Cyber Risk Profile of the
Contract is Low, as defined in Def Stan 05-138

21 The special conditions that apply to this Contract are:

Third Party IPR Authorisation
AUTHORISATION BY THE CROWN FOR USE OF THIRD
PARTY INTELLECTUAL PROPERTY RIGHTS

Notwithstanding any other provisions of the Contract and for
the avoidance of doubt, award of the Contract by the Authority
and placement of any contract task under it does not constitute
an authorisation by the Crown under Sections 55 and 56 of the
Patents Act 1977 or Section 12 of the Registered Designs Act
1949. The Contractor acknowledges that any such
authorisation by the Authority under its statutory powers must
be expressly provided in writing, with reference to the acts
authorized and the specific intellectual property involved

Quality Assurance:

AQAP 2110
NATO Quality Assurance Requirements for Design,
Development and Production.
Edition D Version 1

AQAP 2210
NATO Supplementary Software Quality Assurance
Requirements to AQAP 2110 and AQAP 2310
Edition A Version 2

AQAP 2310
NATO Quality Management System Requirements for
Aviation, Space and Defence Suppliers.
Edition B Version