



## MOD

**Tender Number :**  
ACT/04538

**Description:**  
Provision of Engineering Services and Scheduled Sustainment for the Solid State Phased Array Radar at RAF Fylingdales

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## **Schedule 1**

### **A General Contract Provisions**

#### **A1. Interpretation**

- a. The defined terms in the Contract shall be as set out in Schedule 2.
- 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 Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 4 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
  - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

#### **A2. Amendments to Contract**

- a. Except as provided in clause F4 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 5 (Contract Change Process Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2.a above has been issued.

#### **A3. 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 do not alter significantly the nature 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 clause A2 (Amendments to Contract) and shall be implemented immediately 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) Period required for the production or completion; or
  - (5) Other work caused by the alteration;shall be the subject to clause A2 (Amendments to Contract).

Each amendment under clause A2 shall be classed as a formal change.

**A4. 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 - L of the Conditions of the Contract shall be given equal precedence with Schedule 2 (Definitions of Contract) and Schedule 4 (Contract Data Sheet);
- (2) Schedule 3 (Schedule of Requirements) and Schedule 9 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause 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 A4a. above. 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 clause A21 (Dispute Resolution).

**A5. 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.

**A6. 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.

**A7. 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.

**A8. 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 their own right and the Parties to the Contract declare that they have no intention to grant any such right.

**A9. Governing Law**

a. Subject to clause A9.b., 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 A9.b and clause A21 (Dispute Resolution) 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 A9.a and for enforcement of any judgement, order or award given under English jurisdiction.

b. 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. shall be amended to read:

“The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Scots Law, and subject to clause A21 (Dispute Resolution) and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the Scottish courts. Other jurisdictions may apply solely for the purpose of giving effect to this clause A9.a and for enforcement of any judgement, order or award given under Scottish jurisdiction”

(2) Clause A8 shall not apply.

(3) 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 purposes of the arbitration, for the avoidance of doubt 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.”

c. Where the Contractor is an Overseas Contractor, any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all foreign jurisdictions. However, a foreign jurisdiction may apply solely for the purposes of giving full effect to this clause A9 and for the enforcement of any judgement order or award given under the English jurisdiction. Each Party irrevocably submits to the jurisdiction provided for under this clause.

d. Each Party warrants to the other that entry into the Contract does not, and the performance of the Contract will not, 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.

e. 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.

f. Where the Contractor is an Overseas Contractor it irrevocably appoints the solicitors or other persons detailed in Schedule 4 (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 arising out of or relating to the Contract or any issue connected therewith.

#### **A10. 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 clause shall not exclude liability in respect of any fraudulent misrepresentation.

#### **A11. Disclosure of Information**

a. Subject to clauses A11.d, A11.e and A11.f 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

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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 clause 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 clause.

f. 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.

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

**A12. 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 or as otherwise required to comply with Legislation.

**A13. 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.

**A14. Transparency**

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

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 10 – Contractor 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 clause A14 shall affect the Contractor's rights at law.

**A15. 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 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 clause 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 clause A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this clause A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

**A16. 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 endeavours 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.

**A17. 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) calendar days from receipt of a valid and undisputed 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 giving 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. 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 Schedule 6 (Export License) to this Contract. Where it is not practicable to include the terms set out in Schedule 6, the Contractor shall report that fact and the circumstances to the Authority.

**A18. Change of Control of Contractor**

- a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 #2119, MOD Abbey Wood, South Bristol BS34 8JH, 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.
- 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 above, or has failed to supply or withheld the information required under clause A18.a above.
- d. If the Authority exercises its right to terminate in accordance with clause F6.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.

**A19. 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) days of service of the statutory demand on it;
  - (b) 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) days of service; or
  - (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985;
- (7) or 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;

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- (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; or
  - (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;
  - (11) or 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.

**A20. 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.

**A21. 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

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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.

**A22. 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 4 (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.

**A23. Contractor's Records**

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to clause 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.

**A24. Duration of Contract**

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 4 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

**A25. 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:

- (1) supply the Contractor Deliverables in accordance with the Specification; and
- (2) comply with any applicable quality assurance requirements specified in Schedule 4 (Contract Data Sheet);

in providing the Contractor Deliverables.

b. The Contractor shall comply with all applicable Legislation.

c. The Contractor shall discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

**B2. Overseas Expenditure**

a. The Contractor shall report, in writing, to the Authority details of any direct Overseas expenditure valued over £1 million likely to be incurred in the execution of the Contract immediately the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:

- (1) Contract No;
- (2) Country in which subcontract placed / to be placed;
- (3) Name, Division and full postal address of Subcontractor;
- (4) Value of subcontract as applicable to main Contract;
- (5) Date placed / to be placed.

b. If no Overseas orders valued over £1 million are to be placed, or are placed, the Contractor shall advise the Authority to this effect.

c. For the purpose of clauses B2.a and B2.b Overseas expenditure comprises only those direct payments made by the Contractor to:

- (1) Overseas firms; and
- (2) UK firms, including UK branches or subsidiaries of Overseas firms,

for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.

d. The Contractor shall submit any Information required by clause B2.a to the Authority's Representative (Commercial), as stated in Annex A to Schedule 4 (Contract Data Sheet).

**B3. Import Licence**

If, in the performance of the Contract, the Contractor needs to import materiel into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

**B4. Export Licence**

a. The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Contractor Deliverable (including Information and software) to be Delivered under the Contract is or will be subject to:

- (1) a non-UK export licence, authorisation or exemption; or
- (2) any other related transfer control,

that imposes or will impose end use, end user, re-transfer, re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in clause D1.

b. If requested by the Authority, the Contractor shall give the Authority a summary of every existing or expected licence and restriction referred to in clause B4.a and any related obligation or restriction to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, including, to the extent applicable to such obligations or restrictions:

- (1) the exporting nation, including the export licence number (where known);
- (2) the Article or Service (including Information and software) affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Articles or to anything Delivered or used in the performance or fulfilment of the Services; and
- (6) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Articles or of anything delivered or used in the performance or fulfilment of the Services.

The Contractor shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the Authority must comply.

c. When an export licence is required from a foreign government for the performance of the Contract, the Contractor shall promptly consult with the Authority on the licence requirements and, where the Contractor is the applicant for the licence:

- (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable to be Delivered under the Contract, the Contractor, unless otherwise agreed with the Authority, identifies in the licence application:
  - (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and
  - (b) the end use as: For the Purposes of HM Government;
- (2) include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the Ministry of Defence of the United Kingdom";

d. If the Information required under clauses B4.a and B4.b has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clauses B4.a and B4.b.

e. If the Contractor becomes aware of any changes in the Information notified previously under clause B4.a, B4.b or B4.d that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Contractor shall notify the Authority promptly of the change.

f. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. The Authority shall provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regard to any defence or security issue that may arise.

g. Where the Contract performance requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit an Export Licence Plan for agreement with the Authority.

h. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request:

(1) the Contractor shall, or procure that the Contractor's Subcontractor will, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority;

(2) the Authority shall provide sufficient Information, certification and other documentation necessary to support the application for the requested variation; and

(3) the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

i. Where the Authority provides materiel (Information and items, including software) to enable the Contractor to perform the Contract, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in the provisions of clause B4.a:

(1) the Authority may, or at the request of the Contractor, undertake to give the Contractor a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Contractor's ability to perform the Contract, including, to the extent applicable, to the Contractor's performance of the Contract:

(a) the exporting nation, including the export licence number (where known);

(b) the items or Information affected;

(c) the nature of the restriction and obligation;

(d) the authorised end use and end users;

(e) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or Information affected; and

(f) any specific restrictions on re-transfer or re-export to third parties of the items or Information affected.

(2) this will not include Intellectual Property specific restrictions of the type mentioned in clause D1 (Infringement or Alleged Infringement) in relation to the Authority instead of the Contractor.

(3) the Contractor and its Subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the Authority.

(4) the Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under clause B4.j.

j. Where restrictions are advised by the Authority to the Contractor under clause B4.i., the Authority and the Contractor shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a change to the Specification and handled under the terms of clause A3 (Variations to Specification) and the Contract Price or Delivery schedule or both shall be adjusted as appropriate. If the Contractor is unable to perform the Contract as a result of these restrictions then the Authority shall consult with the Contractor on alternative solutions requiring amendment of the Contract under clause A2 (Amendments to Contract) and A3 (Variations to Specification) and may terminate the Contract if no alternative solution satisfies the essential terms of the Contract. Termination under these circumstances will be under the terms of clause A22 (Termination for Convenience).

k. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Contract.

**B5. Environmental Requirements**

The Contractor shall in all its operations in performing 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.

**B6. Marking of Contractor Deliverables**

a. The Contractor shall ensure that each Contractor Deliverable is marked clearly and indelibly:

(1) in accordance with the requirements specified in Schedule 4 (Contract Data Sheet), or if no such requirement is specified, with the MOD stock reference number, NATO Stock Number (NSN) or alternative reference number specified in Schedule 3 (Schedule of Requirements);

(2) where the Contractor Deliverable has a limited shelf life, the marking shall include: the expiry date / date of manufacture, expressed as specified in Schedule 4 (Contract Data Sheet), or in the absence of such requirement they shall be marked as month (letters) and year (last two figures); and

(3) ensure that any marking method used does not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

b. Where it is not possible to mark a Contractor Deliverable with the required particulars, these should be included on the package in which the Contractor Deliverable is packed, in accordance with DEFCON 129.

**B7. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)**

a. The Contractor shall pack or have packed the Contractor Deliverables:

(1) in accordance with any requirements specified in Schedule 3 (Schedule of Requirements) (which if represented by packing codes shall be interpreted by reference to DEFFORM 96 and DEF STAN 81-041 (Part 1));

(2) to ensure that each Contractor Deliverable may be transported in an undamaged and serviceable condition.

b. The Contractor shall ensure that each package containing the Contractor Deliverables is labelled to include:

(1) the name and address of the Consignor and Consignee as specified in Schedule 4 (Contract Data Sheet) including:

(a) the Delivery destination / address if not of the Consignee;

(b) the transit destination / address (for aggregation / disaggregation, onward shipment etc.);

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- (2) the DEFFORM 129J in accordance with the instructions;
- (3) the description and quantity of the Contractor Deliverables enclosed;
- (4) the full 13 digit NATO Stock Number (NSN) where the UK is registered as a user of it, or, where the requirement does not have a NSN, with the alternative reference number specified in Schedule 3 (Schedule of requirements);
- (5) the makers part, catalogue, serial or batch number as appropriate;
- (6) the Contract number (call off order numbers if enabling or as appropriate);
- (7) any statutory Hazard markings and any handling markings, including the mass of any package which exceeds 3kg;
- (8) the Packaging level (military J, N or P, special H, Commercial A etc) as specified in Schedule 3 (Schedule of Requirements);
- (9) where applicable, any particulars which cannot be marked on each Contractor Deliverable in accordance with clause B6.b.;
- (10) any additional markings specified in Schedule 3 (Schedule of Requirements);
- (11) the Primary Packaged Quantity (PPQ) (if Trade Packaging); and
- (12) if Trade Packaging to be marked in blue "TRADE PACKAGE" or if Export Trade Packaging to be marked in black EXPORT TRADE PACKAGING.

Where UK Military or NATO Packaging is required, labelling of the Contractor Deliverables shall be in accordance with DEF STAN 81-041 (Part 6) and clause B7b.

- c. Bar code markings shall be applied to the external surface of each package and to each PPQ package within. The minimum information shall include; the full 13 digit NSN, Denomination of Quantity (D of Q) see DEFFORM 96, actual quantity in package, Serial Number and / or batch number, if applicable. The bar code symbology used shall meet the requirements of STANAG 4329. Code 39 shall be the default symbology for the Packaging marking application. Requirements for positioning bar codes are defined in DEF STAN 81-041 (Part 6).
- d. Where the Contractor Deliverables are, or contain Dangerous Goods within the meaning of the Regulations set out in B8.a and B8.b, the Packaging level is always Trade or Export Trade Packaging not Military Level as noted in DEF STAN 81-041 (All Parts).
- e. Where UK military or NATO Packaging is required, the Contractor shall meet the requirements as specified in Schedule 3 (Schedule of Requirements). The Contractor Deliverables shall be contained in packages which comply with the requirements of DEF STAN 81-041 (parts 1, 2 and 5) and be capable of meeting the appropriate test requirements of DEF STAN 81-041 (part 3).
- f. Where there is requirement to design UK military or NATO level Packaging, the work shall be undertaken by a company which is registered and certified to Military Packaging Accreditation Scheme (MPAS), (ISO 9001 based), or which is able to demonstrate that its quality systems and military package design expertise are of an equivalent standard. Military Level packages shall be designed to comply with the relevant requirements of DEF STAN 81-041; testing to DEF STAN 81-041 (Part 3) or DEF STAN 00-035. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-041 (Part 4).
- g. New designs shall not be made where there is an existing SPIS or one that may be easily modified to be in accordance with the contract requirements, (see clause B7f.). Application should be made to the Project Team (PT) or other access point for a search to establish the SPIS status using DEFFORM 129a (Application for Packaging Designs and Authorisation for Package Design Work); media format as per clause B7j.
- h. Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design.

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i. SPIS designs are maintained on a central Master Packaging Database (MPD), the SPIS Index (SPIN), held on the MOD design repository or other authorised secure servers, for monitoring by the MOD and review by MPAS certified contractors and the MOD.

j. All SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format which shall be Adobe "PDF" compatible with Adobe Acrobat version 5. Any other format shall be agreed between the Packaging Design Authority (PDA) and the MOD and must be compatible with access to SPIN.

k. Production of Military Level Packaging; where it is necessary to use a SPIS design the packaging manufacturer should also be a registered Contractor as stated in clause B7g. The manufacturer is responsible for confirming that the design is suitable.

l. Minor alterations / updates and similar to existing designs may be carried out by MPAS Certificated designers, all major / significant changes and new designs need to be authorised by the Authority's Representative (Project Manager) (unless that power is delegated to a Prime or MPAS Registered company).

m. Intellectual Property Rights (IPR); the MOD shall retain the rights to the SPIS designs or to copy or use any information relating to them, if otherwise specified.

n. Where applicable one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor is the PDA, they shall:

(a) on receipt of instructions received from the Authority's Representative, (Project Manager), prepare the required package design in accordance with DEF STAN 81-041.

(b) where the Contractor is certified they shall, on completion of any design work, provide the Authority's Representative with the following documents electronically:

(i) a list of all SPIS which have been prepared or revised against the Contract; and

(ii) a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(c) where the PDA is not a certified organisation, they shall obtain approval for their design from a certified organisation before proceeding, then continue with clause B7.n.(1)(b).

(2) Where the Packaging contractor is not the PDA and is un-certified, they shall not produce, modify, or update etc. SPIS Designs. They shall obtain current SPIS design(s) from SPIN or a certified organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they shall apply for SPIS information as soon as practicable after receipt of Contract or Order.

(3) Where the Contractor is un-certified and has been given authority to produce, modify, and update SPIS Designs by contract, they shall obtain approval for their design from a certified organisation before proceeding, then continue with clause B7.n.(1)(b).

(4) Where the Contractor is not a PDA but is certified; follow clauses B7.n.(1)(a) and (b).

The Contractor shall note that all documents supplied as SPIS designs shall be considered as Contract Data Requirement.

o. The Contractor shall comply with the requirements for the design of Military Packaging as follows:

(1) Where there is a requirement to design UK Military or NATO Level Packaging, the work shall be undertaken by a certified organisation, or one that although non-certified is able to demonstrate that its Quality Systems and Military Package Design expertise are of an equivalent standard.

The certification scheme (MPAS) detail is available from:

DES IMOC SCP Packaging  
MOD Abbey Wood,  
Bristol, BS34 8JH

Tel: +44(0)30 679 35353

DESIMOCSCP-Pkg@mod.uk

- (2) Military Level packages shall be designed to comply with the relevant requirements of DEF STAN 81-041; testing to DEF STAN 81-041 (Part 3) or DEF STAN 00-035. Packaging designs shall be prepared on a Services Packaging Instruction Sheet (SPIS), in accordance with DEF STAN 81-041 (Part 4).
  - (3) All Packaging contractors on receipt of a requirement shall search SPIN; or apply for a search of SPIN to establish the SPIS status (using DEFFORM 129a 'Application for Packaging Designs or their Status', media format as per clause B7.g).
  - (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
  - (5) Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated in this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information as with SPIS, see clause B7.f).
  - (6) All SPIS, new or modified (and associated documentation) shall on completion be provided for uploading on to SPIN in the agreed electronic format.
  - (7) The default electronic media format of a SPIS shall be Adobe "PDF" compatible with SPIN requirements.
  - (8) Manufacture of Military Level Packaging; where it is necessary to use a SPIS design then the packaging manufacturer should also be a certified contractor as per clause B7.a above. The Packaging manufacturer is responsible for confirming that the design is suitable.
- p. If special jigs, tooling etc., are required for the production of military Packaging, the Contractor shall obtain written approval from the Authority's Representative (Commercial) before providing them.

#### **B8. Supply of 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. 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 Schedule 3 (Schedule of Requirements):
- (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 Schedule 4 (Contract Data Sheet) (or if no such period is specified no later than one (1) month prior to the Delivery Date), the Contractor shall provide to the Authority's Representatives in the manner and format prescribed in Schedule 4 (Contract Data Sheet) and Schedule 7:

(1) a completed Schedule 7 (Hazardous Articles, Materials or Substances Supplied under the Contract: Data Requirements), confirming 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 B8.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 B8.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 Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations 2009 (as amended from time to time) 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 B8.d for four (4) years after the end of the Contract and shall make them available to the Authority's Representatives on request.

f. Nothing in this clause B8 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

## **B9. Timber and Wood-Derived Products**

a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

(1) shall comply with the Contract Specification; and

(2) must originate either:

(a) from a Legal and Sustainable source; or

(b) from a FLEGT-licensed or equivalent source.

b. In addition to the requirements of clause B9.a above, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

(1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

(2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and safeguarding the basic labour rights and health and safety of forest workers.

c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract complies with the requirements of clause B9.a or B9.b or both.

d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.

e. If the Contractor has already provided the Authority with the Evidence under clause B9.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfy the provisions of clause B9.a and B9.b.

f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with clause A23.

g. Notwithstanding clause B9.c, if exceptional circumstances render it strictly impractical for the Contractor to record evidence of proof of timber origin for previously Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

- (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- (2) an explanation of the circumstances that rendered it impracticable to record evidence of the timber origin.

h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause B9.a and B9.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an "Independent Verification" and resulting report that will:

- (1) verify the forest source of the timber or wood; and
- (2) assess whether the source meets the relevant criteria of clause B9.b.

i. The statistical reporting requirement at clause B9.i applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with clause A2 (Amendments to Contract).

j. The Contractor shall provide to the Authority, a completed Schedule 8 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of an Enabling Contract, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 8s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Commercial Branch identified in the Appendix to Contract.

k. The Schedule 8 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with clause A2 (Amendments to Contract).

l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:

- (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at [www.forestry.gov.uk](http://www.forestry.gov.uk)) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
- (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [www.fao.org](http://www.fao.org)).

**B10. Certificate of Conformity**

- a. Where required in Schedule 4 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 3 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. The Contractor shall consider the CofC to be a record in accordance with clause A23 (Contractor's Records).
- c. The Information provided on the CofC shall include:
- (1) Contractor's name and address;
  - (2) Contractor unique CofC number;
  - (3) Contract number and where applicable Contract amendment number;
  - (4) Details of any approved concessions;
  - (5) Acquirer name and organisation;
  - (6) Delivery address;
  - (7) Contract Item Number from Schedule 3 (Schedule of Requirements);
  - (8) Description of Contractor Deliverable, including part number, Specification and configuration status;
  - (9) Identification marks, batch and serial numbers in accordance with the Specification;
  - (10) Quantities;
  - (11) A signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

- d. Where Schedule 3 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause B10.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain, upon request in accordance with clause A23 (Contractor Records).

**C Price****C1. Contract Price**

- a. The Contractor shall supply the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 4 (Contract Data Sheet).
- b. Subject to clause G2 (Value Added Tax) 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 Overseas.

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

- a. The Contractor and, where applicable any Sub-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.

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

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This clause shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. 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.

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

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the 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.

g. If, under clause D1.a, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:

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- (1) if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
- h. The Authority shall assume all liability and shall indemnify the Contractor, 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.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
- (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
- (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause D1.a.
- k. Where authorisation is given by the Authority under clause D1.e, clause D1.f or clause 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.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, 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.

n. The general authorisation and indemnity is:

(1) clauses D1.a – D1.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 there from 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) days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

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

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at 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 intellectual property rights.

p. Nothing in clause 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 all reasonable access to its premises on reasonable notice for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.

**F Delivery****F1. Delivery/Collection**

a. Schedule 4 (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 4 (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 4 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 4 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) be responsible for all costs of Delivery; and
- (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 3 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

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

- (1) contact the Authority's Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 4 (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 4 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 4 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 4 (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 F1.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 F1.c.

**F2. Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 9 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or

- (2) the time limit in which to reject the Contractor Deliverables defined in clause F3.b has elapsed.

**F3. 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 F3.a shall take place by the time limit for rejection specified in Schedule 4 (Contract Data Sheet), or if no such period is specified within twenty (20) Business Days.

**F4. Diversion Orders**

a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

b. Where necessary the Authority may issue (or having issued cancel) a Diversion Order for urgent Delivery of the Contractor Deliverables identified in it:

- (1) where a Diversion Order is issued the Contractor Deliverables are to be Delivered by the quickest means available, unless otherwise directed;
- (2) any Diversion Order which is beyond the scope of the Contract is to be returned immediately to the Authority's Representative (Commercial) with an appropriate explanation;
- (3) if the terms of the Diversion Order are unclear, the Contractor shall contact the Authority's Representative who issued it immediately for clarification or further instruction, copying the Authority's Representative (Commercial) in on all correspondence;
- (4) the Contractor shall be entitled to any additional Delivery and Packaging costs generated in complying with the Diversion Order or cancellation thereof, claims for which are to be submitted by the Contractor to the Authority's Representative (Commercial) together with appropriate receipts and shall be priced and agreed in writing as a amendment to the Contract in accordance with clause A2 (Amendments to Contract). The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and Packaging costs.

**F5. Self to Self Delivery**

Where it is stated in Schedule 4 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

**F6. Authority's Remedies for Breach of Contract**

a. If the Contractor:

- (1) fails to Deliver the Contractor Deliverables (or any part thereof) by the Delivery Date in accordance with clause F1.b;
- (2) fails to ensure that the Contractor Deliverables (or any part thereof) are available for Collection by the Delivery Date in accordance with clause F1.c;
- (3) subject to clause F6.b, fails to supply Contractor Deliverables that comply with the Specification;  
or
- (4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with clause A18 (Change of Control of Contractor), or fails to supply or withholds the Information, required under clauses A18.a or B8.c and / or B8.d; or

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(5) 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:

(6) where the failure or breach is material, to terminate the Contract or the relevant part thereof with immediate effect by giving written notice to the Contractor;

(7) reject those Contractor Deliverables that it has not accepted in accordance with clause F2 (Acceptance) and return them to the Contractor in accordance with clause F3 (Rejection) and the Contractor shall refund to the Authority any sums paid in respect of the rejected Contractor Deliverables;

(8) give the Contractor the opportunity at the Contractor's expense to remedy any defect in the Contractor Deliverables, to supply replacement Contractor Deliverables or otherwise to rectify the failure or breach within the Authority-specified time limits;

(9) to 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:

(a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or

(b) obtaining the Contractor Deliverables in substitution from another supplier.

b. The Contractor shall not be liable for the Contractor Deliverables' failure to comply with the Specification to the extent that any such non-compliance is attributable to one or more of the following circumstances:

(1) failure by the Authority to install, operate, maintain or store Contractor Deliverables in accordance with any documentation provided by the Contractor;

(2) fair wear and tear, misuse, neglect, accident or negligence, repair or modification by the Authority;

(3) damage caused by the Authority during transportation of the Contractor Deliverables in accordance with clause F1.c.

c. This clause F6 shall apply to any repaired or replacement Contractor Deliverables supplied by the Contractor in accordance with clause F6.a.(9).

d. The Authority's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **G Payments/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 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 supply 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 (Commercial). 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 supply 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 clause 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). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this clause G3 shall be subject to:

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

(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 above, 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 clause 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 4 (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 4 (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 4 (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 clause H2.

b. The Authority's Representatives detailed in Schedule 4 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 4 (Contract Data Sheet).

### **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 4 (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 4 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

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- (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:**

**DEFCON624(SC) (Edn.03/15) - Use of Asbestos**

Definitions

1. "Asbestos" shall have the same meaning as "asbestos" defined in Regulation 2 of the Control of Asbestos Regulations 2012 (COAR).

Prohibition of Asbestos

2. Subject to Clauses 4 and 5 below, no asbestos of any type shall be incorporated into any Articles (as defined in SC2 Conditions of Contract Schedule 1) or other material to be supplied under the Contract.

Notification

3. The Contractor shall notify the Authority in writing as soon as they become aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of the Contract.

Exemption

4. The Secretary of State may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 (the Regulations) exempting the Contractor from parts of the Regulations. The Contractor may incorporate Asbestos into Articles and / or material supplied, or use or process it in the performance of services under the Contract in accordance with the conditions set out in the Certificate.
5. If at any stage during the lifetime of the Contract, an alternative substance becomes available, the Contractor shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the Contractor and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Articles or material which have yet to be supplied under the Contract. The Authority may require the Contractor to suspend any further production of such Articles or material or delivery of services, pending such determination, thereby relieving the Contractor (for the time being) of any contractual obligations to provide such Articles, material or services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of services in lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.
6. If, at any stage during the lifetime of the Contract, the Secretary of State issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the Regulations, the effect of which is that any further supply of the Articles or delivery of services under the Contract would be prohibited by the Regulations, the Contractor shall, on becoming aware of the further

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certificate, immediately refrain from incorporating Asbestos into any such Articles or performing the service and shall provide the Authority with written confirmation of this within forty-eight hours. The Authority reserves the right to vary its requirements in the light of any such decision.

7. Where the Contract is for the provision of a service, the Contractor shall obtain from the Health and Safety Executive or the Secretary of State for Defence as appropriate, an exemption from the requirements of the COAR under Regulation 29 or 30 where an exemption is necessary for performance of the contract.

**DEFCON658(SC) (Edn.06/17) - Cyber**

1. Definitions

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

“Associated Company” means:

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

“Contractor Deliverables” shall have the meaning set out in SC2/3 Schedule 2 (Definitions of Contract);

“Cyber Risk Level” means the level of Cyber Risk relating to this Contract assessed in accordance with the Cyber Security Model;

“Cyber Security Implementation Plan” means the plan referred to in Clause 3 of this Condition including but not limited to any risk-balance case and mitigation measures required by the Authority;

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

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

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

“Cyber Security Model” and “CSM” mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

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

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

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

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

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

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

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

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

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

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

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

“Sub-contractor” means a sub-contractor of the Contractor or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;

“Supplier Cyber Protection Service” means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

## 2. Authority Obligations

### 2.1. The Authority shall:

2.1.1. determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and

2.1.2. notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract .

## 3. Contractor Obligations

3.1. The Contractor shall:

3.1.1. comply with DEFSTAN 05-138;

3.1.2. complete the CSM Risk Assessment Process in accordance with the Authority's instructions and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;

3.1.3. carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

3.1.4. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Condition in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under 3.1.1 above and this 3.1.4 the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

3.1.5. comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;

3.1.6. notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;

3.1.7. in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and

3.1.8. consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor.

PROVIDED ALWAYS THAT where the Contractor has notified the Authority that it cannot comply with 3.1.1 to 3.1.8 above the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 3.1.1 to 3.1.9 above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the provisions of SC2/3 Condition of Contract A21 (Dispute Resolution) or any agreed alternative dispute resolution procedure shall apply.

4. Records

4.1. The Contractor shall keep and maintain until 6 years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

4.1.1. details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and

4.1.2. copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment Process

and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor.

4.2. The Contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this Contract.

## 5. Audit

5.1. Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees that the Authority and its representatives, in coordination with the Contractors NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the Contractors NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

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

5.1.2. to review the Contractor's compliance with its obligations under this Condition; and

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

5.2. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

5.3. The Contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

5.3.1. all information requested by the Authority within the permitted scope of the audit;

5.3.2. reasonable access to any Sites controlled by the Contractor or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract and, where such Sites and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

5.3.3. access to any relevant staff.

5.4. The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days notice of its intention to conduct an audit.

5.5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material breach of the terms of this Condition by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

## 6. Breach of Obligations

6.1. In exercising its rights or remedies under this Condition, the Authority shall:

6.1.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and

6.1.2. give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

6.2. Where the Cyber Risk Level of this Contract is assessed to be a moderate or high, and the Contractor breaches the terms of this Condition, the Authority shall be entitled:

6.2.1. to terminate the Contract (whether in whole or in part) and to claim damages in accordance with SC2 Condition of Contract F6 / SC3 Condition of Contract F1 (Authority's Remedies for Breach of Contract) as though such breach is a material breach; and

6.2.2. where the Contract has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract.

6.3. Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Condition, the Authority shall be entitled:

6.3.1. to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract; and

6.3.2. where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with SC2 Condition of Contract F6 / SC3 Condition of Contract F1 (Authority's Remedies for Breach of Contract) as though such breach is a material breach.

6.4. Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Condition the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with SC2 Condition of Contract F6 / SC3 Condition of Contract F1 (Authority's Remedies for Breach of Contract) as though such breach is a material breach.

## 7. General

7.1. On termination or expiry of this Contract the provisions of this Condition excepting 3.1.2 and 3.1.3 above shall continue in force so long as the Contractor holds any MOD Identifiable Information relating to this Contract.

7.2. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

### 7.3.

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

7.3.2. Subject to 7.3.1 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with SC2/3 Schedule 5 (Contract Change Process Procedure) or any agreed alternative change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority

Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor

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does not agree with the Authority's determination, then the provisions of SC2/3 Condition of Contract A21 (Dispute Resolution) or any agreed alternative dispute resolution procedure shall apply.

The Contractor shall not recover any costs and/or other losses under or in connection with this Condition where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

**DEFCON660 (Edn.12/15) - Official-Sensitive Security Requirements**

1. In this condition "Information" means information recorded in any form disclosed or created in connection with the Contract.
2. The Contractor shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the security aspects letter annexed to the Contract, in accordance with the official security conditions contained in the contract or annexed to the Security Aspects Letter.
3. The Contractor shall include the requirements and obligations set out in clause 2 in any sub-contract placed in connection with or for the purposes of the Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the subcontractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the subcontractor. The Contractor shall also include in the sub-contract a requirement for the subcontractor to flow the requirements of this clause to its subcontractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

**K The special conditions that apply to this Contract are:**

Not Applicable

**L The processes that apply to this Contract are:**

**L1. Contract Reference**

To avoid delays the Contract Number shall be quoted on all correspondence, claims etc. relating to this Contract.

**L2. Designated Officer**

- a. In respect of H2, the Designated Officer (DO) for the Contract will be appointed by the Authority. The appointment is detailed at Annex A to Schedule 4 (DEFFORM 111 Appendix to Contract). The DO will be responsible for liaison between the Contractor and the Authority, maintaining a register of bills authorised for payment and advising the Authority on the Contractor's standards of performance for the purpose of bill certification. The DO will work closely with the Contractor to identify problems before they seriously affect performance, but will not assume responsibility for management of the Contractor's tasks.

## **Schedule 2 - Definitions of Contract**

<b>Articles</b>	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 3 (Schedule of Requirements), but excluding incidentals outside Schedule 3 (Schedule of Requirements) such as progress reports. <b>(This definition only applies when DEFCONs are added to these Conditions);</b>
<b>Assets</b>	means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;
<b>Authority</b>	means the Secretary of State for Defence acting on behalf of the Crown;
<b>Authority's Representative(s)</b>	shall be those person(s) defined in Schedule 4 (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;
<b>Business Day</b>	means any day excluding: <ul style="list-style-type: none"> <li>a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;</li> <li>b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and</li> <li>c. 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;</li> </ul>
<b>Central Government Body</b>	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: <ul style="list-style-type: none"> <li>a. Government Department;</li> <li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c. Non-Ministerial Department; or</li> <li>d. Executive Agency;</li> </ul>
<b>Child Labour Legislation</b>	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.
<b>Collect</b>	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause F1.c and Collected and Collection shall be construed accordingly;
<b>Conditions</b>	means the terms and conditions set out in this document;
<b>Consignee</b>	means that part of the Authority identified in Schedule 4 (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 4 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
<b>Consignor</b>	means the name and address specified in Schedule 4 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;

<b>Contract</b>	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition A2 (Amendments);
<b>Contract Price</b>	means the amount set out in Schedule 3 (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.
<b>Contractor</b>	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;
<b>Contractor Commercially Sensitive Information</b>	means the Information listed in the completed Schedule 10 (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;
<b>Contractor Deliverables</b>	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 in accordance with Schedule 3 (Schedule of Requirements), but excluding incidentals outside Schedule 3 (Schedule of Requirements) such as progress reports;
<b>Control</b>	<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> <p>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</p> <p>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</p> <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>
<b>CPET</b>	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
<b>Crown Use</b>	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;
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated in Schedule 4 (Contract Data Sheet);
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at <a href="https://www.aof.mod.uk">https://www.aof.mod.uk</a> ;
<b>DEF STAN</b>	means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;
<b>Deliver</b>	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition F1 and Delivered and Delivery shall be construed accordingly;
<b>Delivery Date</b>	means the date as specified in Schedule 3 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;

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<b>Denomination of Quantity</b>	means the quantity or measure by which an item of material is
<b>(D of Q)</b>	managed;
<b>Design Right(s)</b>	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
<b>Diversion Order</b>	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 4 (Contract Data Sheet);
<b>Effective Date of Contract</b>	means the date specified on the Authority's acceptance letter. ;
<b>Evidence</b>	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;
<b>Firm Price</b>	means a price (excluding VAT) which is not subject to variation;
<b>FLEGT</b>	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;
<b>Hazardous Contractor Deliverable</b>	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;
<b>Independent Verification</b>	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";
<b>Information</b>	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;
<b>Key Performance Indicators</b>	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";
<b>Legal and Sustainable</b>	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;
<b>Legislation</b>	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;

<b>Military Level Packaging</b>	Packaging that by the nature of the packaged item, or envisaged transport / movement or handling within the military supply chain and requires enhanced protection beyond that which commercial packaging normally provides;
<b>Military Packaging</b>	is a MOD sponsored scheme to accredit military packaging
<b>Accreditation Scheme (MPAS)</b>	designers capable of producing SPIS designs acceptable to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS / DR14. MPAS detail is available from: <a href="mailto:DESJSCSCM-EngTLS-Pkg@mod.uk">DESJSCSCM-EngTLS-Pkg@mod.uk</a> ;
<b>Minor Change</b>	means any change that does not significantly / materially affect the nature of the Contractor Deliverables;
<b>MPAS Registered Organisation</b>	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;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
<b>NATO</b>	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;
<b>Notices</b>	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Overseas</b>	shall mean non UK or foreign;
<b>Packaging</b>	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;
<b>Packaging Design Authority (PDA)</b>	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 4 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;
<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Primary Packaging Quantity (PPQ)</b>	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;
<b>Recycled Timber</b>	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"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> it excludes sawmill co-products;
<b>Schedule of Requirements</b>	means Schedule 3 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables, to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;
<b>Short-Rotation Coppice</b>	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;

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<b>Specification</b>	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 3 (Schedule of Requirements);
<b>STANAG 4329</b>	means the publication NATO Standard Bar Code Symbologies which can be sourced at <a href="https://www.dstan.mod.uk/faqs.html">https://www.dstan.mod.uk/faqs.html</a> ;
<b>Subcontractor</b>	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);
<b>Supported Businesses</b>	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;
<b>Timber and Wood-Derived Products</b>	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;
<b>Transparency Information</b>	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;
<b>Virgin Timber</b>	means Timber and Wood-Derived Products that do not include Recycled Timber.

### Schedule 3 – Schedule of Requirements

	<b>MINISTRY OF DEFENCE</b>	
<b>Name and Address of Tenderer</b>  Supplier Address	Schedule of Requirements for  <b>Provision of Engineering Services and Scheduled Sustainment for the Solid State Phased Array Radar at RAF Fylingdales</b>	<b>Tender No</b>  <b>ACT/04538</b>
<b>Issued With</b>  <b>DEFFORM 47</b>	<b>On</b>	<b>Previous Contract No</b> <b>N/A</b>

#### Requirements

Item Number	Description	SOR Reference	Firm Price (£)
1	Servicing of MG Set Rotor Starter 1	B.1.a.1	
2	Servicing of MG Set Rotor Starter 3	B.1.a.2	
3	Replacement of DSC UPS	B.1.a.3	
4	Replacement of HV EMP Filters	B.1.a.4	
5	Replacement of Fire Alarm Panels	B.1.a.5	
6	Replacement of LV Switchgear (1)	B.1.a.6	
7	Replacement of BMS Field Equipment	B.1.b.1	
8	Replacement of SPE Cooling Water Medium	B.1.b.2	
9	Replacement of LV Switchgear (2)	B.1.b.3	
10	Replacement of Air Compressors	B.1.b.4	
11	Management	B.1	
		<b>Total Firm Price</b>	

- Please Note:
- a) All Works as detailed within the Statement of Requirement are to be completed within the Contract duration period, with dates for work to be agreed between Commercial, the Station and the Contractor. Appropriate milestone stage payments will be mutually agreed between the Authority and the successful Tenderer.
  - b) All Prices proposed by Tenderers shall be Firm.
  - c) All Firm Prices shall be inclusive of all Overheads and Profit.

## Schedule 4 - Contract Data Sheet

<b>Condition A9 Governing Law</b>	<p>Contract to be governed and construed in accordance with: (one must be chosen)</p> <p>English Law      <input checked="" type="checkbox"/></p> <p>Scots Law      <input checked="" type="checkbox"/> clause A9.b shall apply</p> <p>Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause A9.g (if applicable) are as follows:</p>
<b>Condition A22 Termination for Convenience</b>	<p>The Notice period for terminating the Contract shall be <b>90</b> Business Days.</p>
<b>Condition A24 Contract Period</b>	<p>The Contract expiry date shall be: <b>31/03/2020</b></p>
<b>Clause B1.a.(2) Contractor's Obligations – Quality Assurance</b>	<p>Is a Deliverable Quality Plan required for this Contract?</p> <p>Yes      <input checked="" type="checkbox"/></p> <p>No      <input checked="" type="checkbox"/></p> <p>If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.</p> <p><b>Other Quality Assurance Requirements:</b></p> <p><b>N/A</b></p>
<b>Condition B6 Marking of Contractor Deliverables</b>	<p>Special Marking requirements: <b>N/A</b></p>

<p><b>Condition B8 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances</b></p>	<p>A completed Schedule 7 (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:</p> <p>a) The Authority's Representative (Commercial)</p> <p>b) <a href="mailto:DSA-DLSR-MovTpt-DGHSIS@mod.uk">DSA-DLSR-MovTpt-DGHSIS@mod.uk</a></p> <p>or: if only a hardcopy is available to:</p> <p>a) The Authority's Representative (Commercial)</p> <p>b) Hazardous Stores Information System (HSIS) Defence Safety Authority (DSA) Movement Transport Safety Regulator (MTSR) Hazel Building Level 1, #H019 MOD Abbey Wood (North) Bristol, BS34 8QW</p> <p>DSA-DLSR-MovTpt-DG HSIS (MULTIUSER)</p> <p>to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date:</p>
<p><b>Clause B9.i Timber and Wood-Derived Products</b></p>	<p>A completed Schedule 8 (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:</p> <p>The Authority's Representative (Commercial)</p> <p>Or, if only a hardcopy is available to:</p> <p>The Authority's Representative (Commercial)</p> <p>to be Delivered by the Tender Return date:</p>
<p><b>Condition B10 Certificate of Conformity</b></p>	<p>Is a Certificate of Conformity required for this Contract?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>Line Items:</p> <p>If Yes, does the Contractor Deliverables require traceability throughout the supply chain?</p> <p>Yes</p> <p>No</p> <p>Line Items:</p>

<p><b>Condition C1 Contract Price (Excl. Vat)</b></p>	<p>All Schedule 3 line items shall be Firm Price</p>
<p><b>Clause F1.a Delivery</b> (for Schedule 3 items)</p>	<p>The transport requirements shown below are applicable:  <b>N/A</b></p>
<p><b>Clause F1.b Delivery by the Contractor</b> (for Schedule 3 items)</p>	<p>(Where applicable, see Box F1.a above)</p> <p>Special Delivery Instructions (Clause F1.b.(2)) :</p> <p>Each consignment of the Contractor Deliverables to be accompanied by (Clause F1.b.(3)):</p> <p>Line Items</p> <p>Line Items</p>

<p><b>Clause F1.c Collection by the Authority</b> (for Schedule 3 items)</p>	<p>(Where applicable, see Box F1.a above)</p> <p>Special Collection Instructions (Clause F1.c.(2)): <b>N/A</b></p> <p>Each consignment of the Contractor Deliverables to be accompanied by (Clause F1.c.(3)):</p> <p>Line Items</p> <p>Line Items</p> <p>Consignor Address (F1.c.(4)) :</p> <p>Line Items           Address</p> <p>Line Items           Address</p> <p>Consignee Address Details (for the purposes of Clause B7.b.(1)):</p> <p>Line Items           Address Details</p> <p>Line Items           Address Details</p> <p>Line Items           Address Details</p>
<p><b>Clause F3.b Rejection</b></p> <p><b>Note: If no period is inserted here the time period shall be twenty (20) Business days)</b></p>	<p>Time limit for rejection of the Contractor Deliverables shall be 20 Business Days.</p>
<p><b>Condition F5 Self to Self Delivery</b></p>	<p>Is Self to Self Delivery required:</p> <p>Yes   <input checked="" type="checkbox"/></p> <p>No     <input checked="" type="checkbox"/></p> <p>If Yes, Delivery address applicable:</p>
<p><b>Clause H1.a Progress Monitoring</b></p>	<p>The Contractor shall be required to attend the following meetings:</p> <p>Type: <b>TBC</b></p> <p>Frequency: <b>TBC</b></p> <p>Location: <b>TBC</b></p>
<p><b>Clause H1.b Progress Reports</b></p>	<p>The Contractor is required to submit the following Reports:</p> <p>Type: <b>TBC</b></p>

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	<p>Frequency: <b>TBC</b></p> <p>Method of Delivery: <b>TBC</b></p> <p>Delivery Address: <b>TBC</b></p>
<b>Clause H2.b Authority's Representatives</b>	<p>The Authority's Representatives for the Contract are as follows:</p> <p><b>As detailed in Annex A to Schedule 4 (DEFFORM 111)</b></p>
<b>Clause H3.a.(3) Notices</b>	<p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: <b>The Commercial Officer (as per DEFFORM 111)</b></p> <p>Contractor:</p>
<b>Clause H3.a.(5) Notices</b>	<p>Notices served under the Contract can be transmitted by electronic mail</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p>
<b>Other Addresses and Other Information</b> (Covers forms and publications addresses and official use information)	<p><b>See Annex A to Schedule 4 (DEFFORM 111)</b></p>

## Annex A to Schedule 4 - Addresses and Other Information

**1. Commercial Officer:**

Name: Dan Strange  
 Address:  
 Nimrod Building, 3 Site, RAF High Wycombe, Buckinghamshire, HP14 4UE  
 Email: daniel.strange614@mod.gov.uk  
 ☎ 01494 49 4463

**8. Public Accounting Authority:**

- Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
 ☎ 44 (0) 161 233 5397
- For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
 ☎ 44 (0) 161 233 5394

**2. Project Manager, Equipment Support Manager or PT Leader**  
(from whom technical information is available):

Name: To Be Confirmed  
 Address: RAF Fylingdales, Pickering, North Yorkshire, YO18 7NT  
 Email: To Be Confirmed  
 ☎

**9. Consignment Instructions:**

The items are to be consigned as follows:  
 See Schedule of Requirement

**3. Packaging Design Authority:**

Organisation and point of contact:  
 DES IMOC SCP TLS Packaging  
 MOD Abbey Wood,  
 Bristol, BS34 8JH  
 Tel: +44(0)30 679 35353  
 DESIMOCSCP-TLS-Pkg@mod.uk  
 (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 Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943  
 EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946  
 EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B. JSCS**

JSCS Helpdesk ☎ 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837 [www.freightcollection.com](http://www.freightcollection.com)

**4. (a) Supply/Support Management Branch or Order Manager Branch/Name:**

☎  
 (b) U.I.N.

**5. Drawings/Specifications are available from:****6. Intentionally Left Blank****7. Quality Assurance Representative:**

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions. **AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed]

**11. The Invoice Paying Authority:**

Ministry of Defence ☎ 0151-242-2000  
 DBS Finance  
 Walker House, Exchange Flags Fax: 0151-242-2809  
 Liverpool, L2 3YL **Website is:**  
<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management  
 PO Box 2, Building C16, C Site  
 Lower Arcott  
 Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)  
**Applications via fax or email: [DESLCSSL-OpFormsandPubs@mod.uk](mailto:DESLCSSL-OpFormsandPubs@mod.uk)**

**\* NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Intranet site requests should be submitted through the Commercial Officer named in Section 1.

## **Schedule 5 - Contract Change Process Procedure (i.a.w. clause A2.b)**

### **1. Authority Changes**

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 5.

### **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 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.

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- 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.

## **Schedule 6 – Export Licence (i.a.w. clause A17)**

### **Condition to be included in relevant Subcontracts**

#### **Export Licence**

1. In this Condition the following words and expressions shall have the meanings set respectively against them:

- a. “Agreement” means this Subcontract;
- b. “Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
- c. “Contract” means Contract No [insert MOD Contract No] between the Authority and the Contractor;
- d. “Contractor” means [insert name of prime contractor];
- e. “First Party” means [insert name of purchaser];
- f. “Second Party” means [insert name of supplier].

2. In this Condition, “foreign” and “overseas” shall be understood from the position of the Authority and be regarded as “non-UK”.

3. The Second Party shall notify the First Party promptly if the Second Party becomes aware that all or part of any article or service (including Information and software) to be delivered under the Agreement is or will be subject to a non-UK export licence, authorisation or exemption or any other related transfer control that imposes or will impose end use, end user, re-export or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon nationality, affecting the Authority, the Contractor or both. This does not include the Intellectual Property-specific restrictions of the type referred to in condition D1 (Third Party Intellectual Property – Rights and Restrictions) of the First Party’s Conditions of Contract.

4. If requested by the First Party, the Second Party shall give the First Party a summary of every existing or expected licence and restriction referred to in clause 3 and any related obligation or restriction to the extent that they place an obligation or restriction upon the First Party or the Authority with which the First Party or the Authority must comply including, to the extent applicable to such obligations or restrictions:

- a. the exporting nation, including the export licence number (where known);
- b. the article or service (including software and Information) affected;
- c. the nature of the restriction and obligation;
- d. the authorised end use and end users and other parties;
- e. any specific restrictions on access by third parties, or by individuals based upon their nationality, to the articles or to anything Delivered or used in the performance or fulfilment of the services; and
- f. any specific restrictions on re-transfer or re-export of the articles or of anything Delivered or used in the performance or fulfilment of the services.

The Second Party shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the First Party or the Authority must comply.

5. When an export licence is required from a foreign government for the performance of the Agreement, the Second Party shall promptly consult with the First Party on the licence requirements and, where the Second Party is the applicant for the licence:

- a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be Delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:

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- (1) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and
  - (2) the end use as: For the Purposes of HM Government;
- b. include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the [*insert name of the Contractor*] and the Ministry of Defence of the United Kingdom";
  - c. include in the submission the information that the First Party (and any intermediary parties in the supply chain, as applicable) and the Contractor will be recipients and users of the items, including information, for the performance of the Contract.
6. If the information required under clauses 3 and 4 has been provided previously to the First Party by the Second Party, the Second Party may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 3 and 4.
7. If the Second Party becomes aware of any changes in the information notified previously under clause 3, 4 or 6 that would affect the Contractor's or the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Second Party shall notify the First Party promptly of the change.
8. If the Second Party or any subcontractor in the performance of the Agreement needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Second Party or that subcontractor. The First Party will liaise with its purchaser to enable the Authority to provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regards to any defence or security issue that may arise.
9. Where the Agreement performance requires the export of items for which a foreign export licence is required, the Second Party shall include the dependencies for the export licence application, grant and maintenance in the Agreement risk register and in the risk management plan for the Agreement, with appropriate review points. Where there is no requirement under the Agreement for a risk management plan the Second Party shall submit an Export Licence Plan for agreement with the First Party.
10. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request that is transmitted to the Second Party by the First Party, the Second Party shall, or procure that the Second Party's Subcontractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no such objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority. The First Party shall provide information, certification and other documentation necessary to support the application for the requested variation that it has received. A fair and reasonable charge for this service based on the cost of providing it will be borne by the Authority.
11. Where the Second Party subcontracts work under the Agreement, which is likely to be subject to foreign export control, the Second Party shall use reasonable endeavours to incorporate in each subcontract the same terms as set out in these clauses 1 - 14. Where it is not practicable to include these said terms, the Second Party shall report that fact and the circumstances to the First Party.
12. Where the First Party provides materiel (information and items, including software) to enable the Second Party to perform the Agreement, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in clause 3:
- a. the First Party may, or at the request of the Second Party undertake to, give the Second Party a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Second Party's ability to perform the Agreement including, to the extent applicable to the Second Party's performance of the Agreement:
    - (1) the exporting nation, including the export licence number (where known);
    - (2) the items or information affected;

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- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
- (6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.

b. This will not include Intellectual Property-specific restrictions of the type mentioned in condition D1 (Third Party Intellectual Property – Rights and Restrictions) in relation to the First Party's Conditions of Contract instead of the Contractor.

c. The Second Party and its subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the First Party.

d. The Second Party shall notify the First Party immediately if it is unable for whatever reason to abide by any restriction advised by the First Party to the Second Party under clause 12.

13. Where restrictions are advised by the First Party to the Second Party under clause 12, the First Party and the Second Party shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Agreement by the Second Party, then the First Party shall consult with the Second Party on alternative solutions and the terms of the Agreement shall be amended to give effect to the agreed solution. If no alternative solution satisfying the essential terms of the Agreement is agreed by the Parties then the First Party shall have the right to terminate the Agreement. Termination under these circumstances will be in accordance with the principles of condition A22 (Termination for Convenience) of the First Party's Conditions of Contract.

14. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority has undertaken to provide the Second Party with all reasonable assistance to facilitate the granting of an export licence by a foreign Government in respect of performance of the Agreement.

**Schedule 7 - Hazardous Articles, Materials or Substances  
Supplied under the Contract: Data Requirements**

**Hazardous Articles, Materials or Substances  
Statement by the Contractor**

Contract No:

Contract Title:

Contractor:

Date of Contract:

\* To the best of our knowledge there are no hazardous Articles, materials or substances to be supplied.

\* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:        ) attached in accordance with condition B8.

Contractor's Signature:

Name:

Job Title:

Date:

\* check box (☒) as appropriate

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To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)  
Defence Safety Authority (DSA)  
Movement Transport Safety Regulator (MTSR)  
Hazel Building Level 1, #H019  
MOD Abbey Wood (North)  
Bristol BS34 8QW

**Schedule 8 - Timber and Wood- Derived Products Supplied  
under the Contract: Data Requirements**

The following information is provided in respect of clause B9.h (Timber and Wood-Derived Products):

<b>Schedule of Requirements item and timber product type</b>	<b>Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence</b>	<b>Volume of timber Delivered to the Authority with other evidence</b>	<b>Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy</b>	<b>Total volume of timber Delivered to the Authority under the Contract</b>

**Schedule 9 - Acceptance Procedure (i.a.w. condition F2)**

No additional Acceptance Procedure, Acceptance to be in accordance with Condition F2.

**Schedule 10 - Contractor's Commercially Sensitive Information Form (i.a.w. condition A14)**

Contract No: <b>ACT/04538</b>
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: