

Contract Terms and Conditions

Contract No: LSBU15/0126

BABCOCK

For The Supply of IFF Mode 5 Ramp Test Sets and Accessory Tripod

Between Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland Team Name and address: Babcock DSG* Contract Let Building B15 MOD Donnington Telford, TF2 8JT E-mail Address: Jonathan.Bamford@babcockinternational.com Telephone Number: 01952 673919	And Contractor Name and address: Cobham AvComm 10200 West York Street Wichita KS 67215 United States of America E-mail Address: Kim.Taylor@cobham.com
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** Where the document refers to the Authority, this shall represent Babcock DSG who are acting as the Procurement Agent on behalf of the Authority*

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The Schedules that apply to this Contract are:

Schedule 1	Definitions of Contract
Schedule 2	Schedule of Requirements
Schedule 3	Contract Data Sheet Annex A to Schedule 3
Schedule 4	Contract Change Process Procedure (i.a.w. clause A2.b)
Schedule 5	Export Licence (i.a.w. clause A17)
Schedule 6	Hazardous Articles, Materials or Substances Supplied under the Contract: Data Requirements
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Schedule 8	Acceptance Procedure (i.a.w. condition F2)
Schedule 9	Contractor's Commercially Sensitive Information Form

MOD Conditions for the Supply of Goods and Associated Services: Contract No: LSBU15/0126

A General Contract Provisions

A1. Interpretation

- a. The defined terms in the Contract shall be as set out in **Schedule 1**.
- b. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise.
 - (3) The expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in **Schedule 3** (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
 - (7) Unless excluded within the 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 4** (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with **clause A2.a** above has been issued.

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 shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in **Clause A2** (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority’s Notice, unless otherwise specified.
- b. Any variations that cause a change to:
 - (1) fit, form, function or characteristics of the Contractor Deliverables;
 - (2) the cost;
 - (3) Delivery Dates;
 - (4) the period required for the production or completion; or
 - (5) other work caused by the alteration,

shall be the subject to **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 - H** (and **J - L**, if **section J - L** are included) of the Conditions of the Contract shall be given equal precedence with **Schedule 1** (Definitions of Contract) and **Schedule 3** (Contract Data Sheet);
- (2) **Schedule 2** (Schedule of Requirements) and **Schedule 8** (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency, within or between the documents referred to in **clause 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.d**, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to **clause A9.d** and **A21** (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to **clause A.9.d** any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this **clause A9** and for the enforcement of any judgment, order or award given under English jurisdiction.

d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

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

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

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

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

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

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

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

f. Each Party agrees with each other Party that the provisions of this **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.

g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in **Schedule 3** (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

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 condition shall not exclude liability in respect of any fraudulent misrepresentation.

A11. Disclosure of Information

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

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

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

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

(4) shall not copy any of that Information except to the extent necessary for the

purpose of exercising its rights of use and disclosure under the Contract.

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

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

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

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

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

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

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

(3) can show:

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

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

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

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

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

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

f. The Authority may disclose the Information:

(1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

(2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in **Schedule 1** (including benchmarking organisations) for any purpose relating to or connected with this Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

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

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

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

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

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

A17. Subcontracting and Prompt Payment

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 5** to this Contract. Where it is not practicable to include the terms set out in **Schedule 5**, 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, Strategic Supplier Management Team, Poplar Level 1 #2119, MOD Abbey Wood, South Bristol BS34 8JH, as soon as practicable if the Contractor will potentially undergo a material change of Control. The Contractor shall not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

- b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.
- c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority's Concerns to the Authority's satisfaction in accordance with **clause A18.a** or has failed to supply or withheld the Information required under **clause A18.a**.
- d. If the Authority exercises its right to terminate in accordance with **clause 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) Business 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) Business 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;
- (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.

g. In exercising its rights or remedies to terminate the Contract under **clause A19 f.** the Authority shall:

(1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;

(2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

(a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;

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

h. Where the Contract has been terminated under **clause A19.f.**, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

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** 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 3** (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.
- b. In the event that the Authority exercises its rights in accordance with **clause A22.a**, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.
- c. The Authority's total liability under **clause A22.b** shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

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 after the expiry or earlier termination of the Contract.

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 3** (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 3** (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).

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 Contractor Deliverables (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 Contractor Deliverables or to anything Delivered or used in the performance or fulfilment of the Contractor Deliverables; and
- (6) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Contractor Deliverables or of anything delivered or used in the performance or fulfilment of the Contractor Deliverable.

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** (Third Party Intellectual Property – Rights and Restrictions) 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.j**, 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 3** (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 2** (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 3** (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 2** (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 3** (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.);
 - (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 2** (Schedule of requirements);
 - (5) the makers part, catalogue, serial or batch number as appropriate;
 - (6) the Contract number (call off order numbers if Framework 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 2** (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 2** (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 2** (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 B7.f.**). 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 B7.j.**
- h. Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design.
- 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 B7.g.** 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 (Project Manager) 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 TLS Packaging
MOD Abbey Wood,
Bristol, BS34 8JH

Tel: +44(0)30 679 35353

DESIMOCSCP-TLS-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. The Authority shall retain all Intellectual Property Rights (IPR) relating to the designs unless otherwise agreed in writing.
- q. 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 Material or Substance in 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 condition. 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 2** (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 3** (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 3** (Contract Data Sheet) and **Schedule 6**:

- (1) a completed **Schedule 6** (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 and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable) 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;
- (4) where the Hazardous Contractor Deliverables are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272 / 2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

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 required 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 **clauses 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 used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
- (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
 - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with **clause 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.j** applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with **Clause A2**.
- j. The Contractor shall provide to the Authority, a completed **Schedule 7** (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of an Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed **Schedule 7s** (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Commercial Branch identified in the Appendix to Contract.
- k. The **Schedule 7** (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with **Clause A2**.
- 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) 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).

B10. Certificate of Conformity

a. Where required in **Schedule 3** (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with **Schedule 2** (Schedule of

Requirements) and any applicable Quality Plan. 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 2** (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 2** (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at **clause 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 3** (Contract Data Sheet).

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

D Intellectual Property

D1. Third Party Intellectual Property – Rights and Restrictions

a. The Contractor and, where applicable any subcontractor, shall promptly notify the Authority as soon as they become aware of:

- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
- (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
- (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract;

clause 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 its 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 condition shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 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 U K 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:

- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, 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 UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

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

- (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
- (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under **clause D1.a**.

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

- (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
- (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

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) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
 - (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- 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' Premises

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

F Delivery and Breach Of Contract

F1. Delivery / Collection

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

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

- (1) contact the Authority's Representative as detailed in **Schedule 3** (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
- (2) comply with any special instructions for arranging Delivery in **Schedule 3** (Contract Data Sheet);
- (3) All Contract Deliverables shall be shipped in accordance with the requirements stated in the Contract and shall be accompanied by one delivery note per order / delivery. In addition, to assist with the processing of the receipt and subsequent payment, the delivery note shall be clearly marked with the following information in a human readable Barcode 39 font:

Contract Number

Order Number

NSN

PR Number (where applicable)

Quantity

The delivery note shall not reference to Terms and Conditions other than those stated in the contract.

- (4) be responsible for all costs of Delivery; and
- (5) Deliver the Contractor Deliverables to the Consignee at the address stated in **Schedule 2** (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

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

- (1) contact the Authority's Representative (Transport) as detailed in box 10 of DEFFORM 111 at **Annex A to Schedule 3** (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
- (2) comply with any special instructions for arranging Collection in **Schedule 3** (Contract Data Sheet);
- (3) All Contract Deliverables shall be shipped in accordance with the requirements stated in the Contract and shall be accompanied by one delivery note per order / delivery. In addition, to assist with the processing of the receipt and subsequent payment, the delivery note shall be clearly marked with the following information in a human readable Barcode 39 font:

Contract Number

Order Number

NSN

PR Number (where applicable)

Quantity

The delivery note shall no reference to Terms and Conditions other than those stated in the contract.

- (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in **Schedule 3** (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
- (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).

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

- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with **clause 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 8** (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:
 - (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
 - (2) the time limit in which to reject the Contractor Deliverables defined in **clause 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 3** (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 an amendment to the Contract in accordance with **Clause A2**. 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 3** (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**, or fails to supply or withholds the Information, required under **clauses A18.a or B8.c** and / or **B8.d**;

(5) commits a persistent failure by failing to meet either:

(a) a single Key Performance Indicator (KPI) on one or more occasions in a rolling 12 month period; or

(b) one or more KPIs on a rolling 12 month period,

(c) the number of order lines completed by the agreed delivery date expressed as a percentage of the total number of order lines delivered in the period.

where this Contract includes a KPI regime under Section L; or

(6) 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:

(7) where the Contractor commits a persistent failure in accordance with **clause F6.a.(5)** or where the breach is material, in accordance with **clause F6.a.(6)**, to terminate the Contract or the relevant part thereof with immediate effect by giving written notice to the Contractor;

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

(9) 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;

(10) 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. In the event that the Authority terminates the Contract in whole or in part pursuant to this **clause F6.a.(7)** or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

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

G Payment And Receipts

G1. Payment

a. The contractor shall raise a commercial invoice in the name of Babcock DSG Limited, which must include the Purchase Order Number, and submit via Email to;
I&RM-accountpayable@babcockinternational.com

Or to the following postal address:

I&RM Accounts Payable
Babcock DSG Ltd
Building B15
Donnington
Telford
Shropshire TF2 8JT

- b. In the event that the Contractor does not adhere to the time of delivery notified by Babcock DSG, Babcock DSG shall not be held responsible for any subsequent claim by the Contractor, nor be held liable to meet any additional charges incurred by the Contractor through failure to deliver on the due date at the appointed time.
- c. Payment shall be made in accordance with the Late Payment of Commercial Debts Act, 1998, on satisfactory delivery of the Articles, consigned to the address detailed on each individual Purchase Order line.
- d. 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.
- e. 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 includes 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. The Contractor shall notify the Authority's Representative 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**, 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 3** (Contract Data Sheet) and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings.

b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in **Schedule 3** (Contract Data Sheet).

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

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

H3. Notices

a. A Notice served under the Contract shall be:

(1) in writing in the English Language;

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

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

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

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

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

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

DEFCON 117 (10/13) – Supply of Documentation for NATO Codification Purposes

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

K1. Pricing

Prices must be in £GBP. Prices must be Firm for the duration of the contract.

K2. Copyright

- a. This Condition shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, except that it shall not apply to copyright works consisting of technical data and software where such rights are granted elsewhere in the Contract.
- b. The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.
- c. The Contractor agrees not to publish any copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.
- d. The Authority shall have, in respect of any copyright work to which this Condition applies, a free licence:
 - (1) to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to **clauses b., c. or d.** of this condition, be made available to any third party;
 - (2) to issue the work or any part of the work or any copy of the work or any part thereof to any contractor or agent for the purpose of use only in connection with a contract for the United Kingdom Government for the study, management, evaluation, and/or assessment of the work, provided that any such contractor or agent shall be placed under an obligation which restricts disclosure and use of such work to the said purpose;
 - (3) to issue the work or any part of the work or any copy of the work or any part thereof to the government of a nation who is a member of the EU or NATO or bodies forming part of said groupings, to the Governments of Australia, New Zealand and Japan or such other government(s) of nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;
 - (4) to issue the work or any part of the work or any copy of the work or any part thereof to

another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes.

Provided that, subject to any pre-existing rights of the Authority, **clauses c.** and **d.** shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract. **Clauses c.** and **d.** shall apply to all works or part thereof unless otherwise marked by the Contractor in accordance with **clause f.** below.

e. As soon as it becomes aware that any copyright work or part thereof Delivered or proposed to be Delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall inform the Authority and upon Delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.

f. The Contractor may mark or include in any copyright work to which this Condition applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.

g. This Condition shall constitute an "agreement to the contrary" for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.

h. In this Condition "copyright work" shall be understood to include any works, data or other materials in which a database right subsists.

L. The processes that apply to this Contract are:

L1. New Stores Rejects

If the Authority reasonably considers that any Contractor Deliverable fails to comply in all material respects to the specification, a New Stores Reject (NSR) shall be raised by the Authority. Such rejection shall be reported to the Contractor in writing, who will manage it in accordance with paragraph 2 and 3.

Once notified in accordance with paragraph 1 the Contractor shall respond to the Authority's Representative (Procurement Branch) within 5 Business Days of receipt detailing its offer of repair and/or replacement at no cost to the Authority. The Authority's Representative (Procurement Branch) shall respond to the Contractors proposed remedy within 5 Business Days.

Once the remedy is agreed between the Authority and the Contractor, the Parties shall agree a reasonable time period within which the NSR shall be fully resolved and the corrected Contractor Deliverables delivered, at the Contractor's cost, to the Authority's stated consignee.

Performance in this area shall be measured in accordance with the Key Performance Indicators detailed at **Clause L5.**

L2. Non-Conforming Deliveries

Please note that following a recent amendment to Joint Service Publication (JSP) 886 Vol 2 Part 1, it is now Logistic Services (LS) policy to quarantine and reject any Contractor Deliverables that do not conform to the requirements of the contract.

Should any Contractor Deliverables be deemed as non-conforming by LS the Authority will notify the Contractor as to the reason(s) for non-conformance within 5 working days of notification. In accordance with **Clause F3 - Rejection**, it will be the responsibility of the Contractor, within 5 working days of notification, to either rectify the problem on site at LS or arrange for the Contractor Deliverables to be collected and rectified at the Contractor's premises and returned to LS within 10 working days of collection at no cost to the crown. The list attached details the reasons upon which a consignment may be rejected.

It is advised however that in certain circumstances the Authority may consider it impractical for the Contractor to undertake any rectification due to geographical location, nature of the non-conformance and/or urgency of need, in these situations the Authority may request LS to undertake the rectification action but will pass on any associated costs to the Contractor as necessary.

Reasons for Non-Conformance

Incorrect DMC/NSN
Incorrect Description
Part/Batch No's Incorrect
Incorrect PPQ
Incorrect D of Q
Packaging Level incorrect
No Bar Code Labelling
Insufficient/No Test Certificates
Damaged in Transit
Incorrectly Labelled
Incorrect Matcon
No Logo (ISPM 15) Fail
Mixed NSN
Non Codified Item
No Engineering Record Card
No Labelling
No Paperwork
No weight Label
In adequate Shelf Life
No hazard Data Sheet
Incorrect Quantity - Surplus

The level of non-conforming deliveries shall be measured in accordance with the Key Performance Indicators detailed at **Clause L5** and any failure to meet the required level of performance shall be subject to the remedies contained therein.

L3. Ordering Procedure

An order for the supply of the Contract Deliverables listed at **Schedule 2** shall be issued to the Contractor by Babcock using a Purchase Order Form, **Schedule 2**. The Purchase Order shall constitute a requirement against the Contract. Within 5 days of the date of issue of the Purchase Order, the Contractor shall confirm in writing that he is proceeding with the order. In the event that the Contractor is unable to accept the Purchase Order, or any particular Article of the Purchase Order, he shall notify the Point of Contact identified on the Purchase Order for each individual Order line within 5 working days of the date of issue of the Purchase Order, giving full details of the reasons for non-acceptance and/or those aspects of the order, which require amendment prior to acceptance (e.g: Delivery date).

Babcock reserves the right to reject any such proposal.

Failure to deliver by the agreed date shall enable Babcock (at its option) to be released from any obligation to accept and pay for the contract deliverables and/or cancel all or part of the order without prejudice to any other rights or remedies under the Contract.

All contract deliverables should be packed to the standard specified on the Purchase Order and be delivered on a Carriage Paid basis, to the address detailed on the Purchase Order.

When delivering contract deliverables, the Contractor is to include a delivery note that includes the following information:

- Contract Number
- Order Number
- NSN
- PR Number (where applicable)
- Qty

All Contract Deliverables shall be shipped in accordance with the requirements stated in the Contract and be accompanied by one delivery note per order / delivery. In addition, to assist with the processing of the receipt and subsequent payment, the delivery note shall be clearly marked with the information Above in a human readable Barcode 39 font.

The delivery note shall make no reference to Terms and Conditions other than those stated in

the Contract

L4. Payment and Invoicing Procedure

In accordance with **Clause G1**, For the purposes of DEFCON 522 and DEFFORM 522A (where applicable), the relevant form shall be the commercial invoice. DEFCON 522 **clause 2a** shall be **replaced** with the following: **“arrange payment; or” and clause 3 shall not apply.**

For the purposes of DEFCON 523 the Bill Paying Authority shall be as **Clause G1**.

In the event that the Contractor does not adhere to the time of delivery notified by Babcock, Babcock shall not be held responsible for any subsequent claim by the Contractor, nor be held liable to meet any additional charges incurred by the Contractor through failure to deliver on the due date at the appointed time.

Payment shall be made in accordance with the Late Payment of Commercial Debts Act, 1998, on satisfactory delivery of the contract deliverables, consigned to the address detailed on each individual Purchase Order line.

L5. Key Performance Indicators

The Authority shall measure the performance of the Contractor with reference to the Key Performance Indicators detailed Below,

KPI No 1	Delivery Performance		
KPI Description	The order lines completed by the agreed delivery date expressed Delivery date will be set based upon the Lead time provided. KPI TARGET: More than or equal to 90%		
Performance Level	More than or equal to 98%	Less than 98% but more than or equal to 90%	Less than 90%

KPI No 2	Delivery Performance		
KPI Description	New Stores Rejects rectified within a timely manner from first notification. KPI TARGET: Less than 30 Days		
Performance Level	Less that 30 days	30 – 60 Days	More than 61 Days

Schedule 1 - Definitions of Contract

Articles	means the Contractor Deliverables (goods and / or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (This definition only applies when DEFCONs are added to these Conditions);
Assets	means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;
Authority	means the Secretary of State for Defence acting on behalf of the Crown;
Authority's Representative(s)	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b ;
Business Day	means any day excluding: <ul style="list-style-type: none">a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; andc. such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least ten (10) Business Days in advance;
Central Government Body	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none">a. Government Department;b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c. Non-Ministerial Department; ord. Executive Agency;
Child Labour Legislation	means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
Collect	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;
Conditions	means the terms and conditions set out in this document;
Consignee	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
Consignor	means the name and address specified in Schedule 3 (Contract

	Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with Clause A2 (Amendments);
Contract Price	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.
Contractor	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
Contractor Commercially Sensitive Information	means the Information listed in the completed Schedule 9 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
Contractor Deliverables	means the goods and / or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports;
Control	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none"> a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor; <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
CPET	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy
Crown Use	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
DBS Finance	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
DEFFORM	means the MOD DEFFORM series which can be found at https://www.aof.mod.uk ;
DEF STAN	means Defence Standards which can be accessed at https://www.dstan.mod.uk ;
Deliver	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with Clause F1 and Delivered and Delivery shall be construed accordingly;

Delivery Date	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;
Denomination of Quantity (D of Q)	means the quantity or measure by which an item of material is managed;
Design Right(s)	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
Diversion Order	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
Effective Date of Contract	means the date specified on the Authority's acceptance letter. ;
Evidence	means either: <ul style="list-style-type: none"> a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
Firm Price	means a price (excluding VAT) which is not subject to variation;
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
Independent Verification	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
Information	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
Key Performance Indicators	means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management";
Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;
Legislation	means in relation to the United Kingdom: <ul style="list-style-type: none"> a. any Act of Parliament; b. any subordinate Legislation within the meaning of Section 21 of the Interpretation Act 1978;

	<p>c. any exercise of the Royal Prerogative; or</p> <p>d. any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;</p>
Military Level Packaging	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;
Military Packaging Accreditation Scheme (MPAS)	is a MOD sponsored scheme to accredit military packaging 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: DESJSCSCM-EngTLS-Pkg@mod.uk ;
Minor Change	means any change that does not significantly / materially affect the nature of the Contractor Deliverables;
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Notices	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	<p>Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;</p> <p>Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;</p>
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Primary Packaging Quantity (PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
Recycled Timber	<p>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:</p> <p>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</p> <p>b. post-consumer reclaimed wood and wood fibre, and driftwood;</p> <p>c. reclaimed timber abandoned or confiscated at least ten years previously;</p> <p>it excludes sawmill co-products;</p>

Schedule of Requirements	means Schedule 2 (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;
Short-Rotation Coppice	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;
Specification	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);
STANAG 4329	means the publication NATO Standard Bar Code Symbolologies which can be sourced at https://www.dstan.mod.uk/faqs.html ;
Subcontractor	means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);
Supported Businesses	means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;
Timber and Wood-Derived Products	means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;
Transparency Information	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;
Virgin Timber	means Timber and Wood-Derived Products that do not include Recycled Timber.

Schedule 2 - Schedule of Requirements for Contract No: LSBU15/0126

For the Supply of IFF Mode 5 Ramp Test Sets and Accessory Tripod

<u>Contractor Deliverables</u>									
Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification (Please insert a description of your submission)	Consignee Address Code (full address is detailed in DEFFORM 96)	Packaging Requirements inc. PPQ and DofQ (as detailed in DEFFORM 96)	Delivery Date	Total Qty	Firm Price (£) Ex VAT	
								Per Item	Total inc. Packaging (and Delivery if specified in Schedule 3 (Contract Data Sheet))
1	6625-01-583-2774	86335	IFF Mode 5 Ramp Test Sets	XY	PC – A PPQ – 1 DofQ – EA	31/05/17	7	BLANK	BLANK
2	6625-99-377-5986	67474	Accessory Tripod	XY	PC – A PPQ – 1 DofQ – EA	31/05/17	5	BLANK	BLANK
Total Firm Price									£81,307.73

Item Number	Consignee Address (XY code only)
All Items	MOD Donnington Donnington Telford TF2 8JT

Schedule 3 - Contract Data Sheet for Contract No: LSBU15/0126

Clause A9 Governing Law	<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 type="checkbox"/> clause A9.d 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>
Clause A22 Termination for Convenience	<p>The Notice period for terminating the Contract shall be 20 Business Days.</p>
Clause A24 Contract Period	<p>The Contract expiry date shall be: once the contract deliverables have been receipted into stores.</p>
Clause B1.a.(2) Contractor's Obligations – Quality Assurance	<p>Is a Deliverable Quality Plan required for this Contract?</p> <p>Yes <input 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 90 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>Other Quality Assurance Requirements:</p> <p>AQAP 2120 Edition 3 NATO Quality Assurance Requirements for Production.</p> <p>Concessions iaw Def Stan 05-061 Part 1 Issue 5</p>
Clause B6 Marking of Contractor Deliverables	<p>Special Marking requirements: N/A</p>

<p>Clause B8 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances</p>	<p>A completed Schedule 6 (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) DSA-DLSR-MovTpt-DGHSIS@mod.uk</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: Submitted with Tender to Babcock</p>
<p>Clause B9.i Timber and Wood-Derived Products</p>	<p>A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>The Authority's Representative (Commercial) (Box 1 of Annex A)</p> <p>Or, if only a hardcopy is available to:</p> <p>The Authority's Representative (Commercial) (Box 1 of Annex A)</p> <p>to be Delivered by the following date: Already submitted with Tender</p>
<p>Clause B10 Certificate of Conformity</p>	<p>Is a Certificate of Conformity required for this Contract?</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Line Items: All</p> <p>If Yes, does the Contractor Deliverables require traceability throughout the supply chain?</p> <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>Line Items:</p>

Clause C1 Contract Price (Excl. Vat)	<p>All Schedule 2 line items shall be Firm Price other than those stated below:</p> <p>Line Items Clause K1 refers</p>								
Clause F1.a Delivery (for Schedule 2 items)	<p>The transport requirements shown below are applicable:</p> <p>Line Items All Carriage Paid</p> <p>To be Delivered by the Contractor (See Box F1.b)</p> <p>Line Items 1 and 2</p> <p>To be Delivered by the Contractor (See Box F1.b)</p>								
Clause F1.b Delivery by the Contractor (for Schedule 2 items)	<p>(Where applicable, see Box F1.a above)</p> <p>Special Delivery Instructions (Clause F1.b.(2)) : TRADE RECEIPTS DELIVERIES – LS DONNINGTON</p> <p>Unless an alternative procedure has been agreed by Logistic Services (LS) and has been communicated to the supplier/delivery team, the following procedures are applied when agreeing and booking in trade deliveries to the Donnington sites.</p> <p>PARCEL DELIVERIES TO B5 WAREHOUSE LS DONNINGTON</p> <p>For parcel deliveries to LS Donnington, the following criteria will apply:</p> <table border="0"> <tr> <td>A. Maximum weight per item</td><td>25 KG</td></tr> <tr> <td>B. Maximum length per item</td><td>80 CM</td></tr> <tr> <td>C. Maximum width per item</td><td>80 CM</td></tr> <tr> <td>D. Maximum height per item</td><td>40 CM</td></tr> </table> <p>At the point of Parcel delivery, B5 LS Donnington reserves the right to:</p> <ul style="list-style-type: none"> • Not accept a delivery/collection outside of the hours 8.00 to 16:00 (15:30 Friday only) • Allow up to 5 parcels per supplier per day. • Defer a delivery to our Docks area if there is a Health and Safety concern. • Redirect the driver to an approved area/an alternative building for offloading. • Offer the next available space within the Vehicle Delivery Service if the delivery does not meet the criteria of that above. <p>LS will not take responsibility for undelivered goods should the company choose not to be re-directed.</p> <p>PALLET DELIVERIES - LS DONNINGTON</p> <p>Items requiring delivery to LS that fall outside of the above criteria, should be declared through our Logistics Commodities and Services Vehicle Booking Service (Booking Slots) situated in Trade Receipts, B5 FMW Donnington, using the Email address below. DESDSA-FMWSLOTS@mod.uk quoting:</p> <p>1. 13 digit NATO Stock Number (NSN) for deliveries of 10 NSNs or</p>	A. Maximum weight per item	25 KG	B. Maximum length per item	80 CM	C. Maximum width per item	80 CM	D. Maximum height per item	40 CM
A. Maximum weight per item	25 KG								
B. Maximum length per item	80 CM								
C. Maximum width per item	80 CM								
D. Maximum height per item	40 CM								

	<p>under (multiple pallet deliveries of a single NSN will not be accepted without it).</p> <p>2. Type of Item (Description).</p> <p>3. Requirement Change Form (RCF) Number as advised by Project Team.</p> <p>4. Number of packages / pallets.</p> <p>5. Any special type of Mechanical Handling aids required.</p> <p>6. Any specialist information e.g. Urgent Operational Requirement / Valuable & Attractive.</p> <p>7. Supplier / Carrier Details.</p> <p>8. Contact Number in case of communication failure.</p> <p>9. Preferable date and time for delivery.</p> <p>10. A safety data sheet is needed for hazardous items.</p> <p>NCR Collection</p> <p>If the booking request is for a Non-Compliant Trade Receipt requiring collection from the Donnington site, the NCR number (NCR 0****), NSN and any covering Documentation is required at the email stage. DESDSA-FMWSLOTS@mod.uk Should the email communication links be unavailable please contact:</p> <p>Booking Slots Mobile – 07500 123710 Civ – 01952 673322 Receipts Manager 01952 673305 Receipts Supervisor 01952 673389</p> <p>Trade Deliveries to B47 Donnington</p> <p>All deliveries irrespective of size, weight, etc.; are to be booked in by telephoning: Civ tel:01952 672112 Mil tel: 94480 2112 01952 672110 94480 2110 Trade Deliveries to B54 Donnington All deliveries irrespective of size, weight, etc.; are to be booked in by telephoning: Civ tel:01952 672236 Mil tel: 94480 2236 01952 672231 94480 2231 Trade Deliveries to Warehouse 33 Donnington There is no requirement to book in. Warehouse 33 reserves the right to not accept a delivery outside of the hours 8:00 to 16:00 (15:30 Friday only).</p> <p>OVERVIEW</p> <p>Due to the secure nature of the LS Depots, all delivery drivers must have the appropriate identification and documentation relating to the load or risk being turned away. Suppliers must not assume they that can simply turn up and must adhere to the criteria laid out above.</p> <p>It is a condition of this contract that in the event that the Contractor does not adhere to the time of delivery notified by the Authority, the Authority will not consider itself responsible for any subsequent claim by the Contractor, nor be held liable to meet any additional charges incurred by the Contractor through failure to deliver on the due date at the appointed time.</p> <p>Each consignment of the Contractor Deliverables to be accompanied by (Clause F1.b.(3)):</p> <p>Line Items All Delivery Note</p>
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Clause F3.b Rejection Note: If no period is inserted here the time period shall be twenty (20) Business days)	Time limit for rejection of the Contractor Deliverables shall be 20 Business Days.
Clause F5 Self to Self Delivery	Is Self to Self Delivery required: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, Delivery address applicable:
Clause H1.a Progress Monitoring	The Contractor shall be required to attend the following meetings: Type: Contract review Meetings Frequency: Not Applicable for this requirement Location: I&RM, Babcock DSG Ltd, Building B15, Donnington, Telford, Shropshire TF2 8JT
Clause H1.b Progress Reports	The Contractor is required to submit the following Reports: Type: Order Book Reconciliation Frequency: As Required Method of Delivery: Email Delivery Address: From Requestor
Clause H2.b Authority's Representatives	The Authority's Representatives for the Contract are as follows: Commercial: Mr Jonathan Bamford Technical Manager: Mr Ben Sullivan Payment: I&RM Accounts payable, Babcock DSG Ltd, Building B15, Donnington, Telford, Shropshire TF2 8JT Email: I&RM-accounts payable@babcockinternational.com
Clause H3.a.(3) Notices	Notices served under the Contract shall be sent to the following address: Authority: Jonathan.Bamford@babcockinternational.com Babcock DSG Limited, Defence & Security, Babcock International Group, Building B15, Donnington, Telford, TF2 8JT Contractor: Kim.Taylor@cobham.com Cobham AvComm, 10200 West York Street, Wichita KS, 67215, United States of America

Clause H3.a.(5) Notices	<p>Notices served under the Contract can be transmitted by electronic mail</p> <p>Yes <input checked="checked" type="checkbox"/></p> <p>No <input type="checkbox"/></p>
Other Addresses and Other Information (Covers forms and publications addresses and official use information)	See Annex A to Schedule 3 (DEFFORM 111)

1. Commercial Officer

Name: Mr Jonathan Bamford

Address: Procurement Officer, Babcock DSG Ltd, Defence & Security, Babcock International Group, Building B15, MOD Donnington, Telford, Shropshire, TF2 8JT

Email: Jonathan.Bamford@babcockinternational.com

2. Project Manager, Equipment Support Manager or PT Leader

(from whom technical information is available)

Name: Mr Ben Sullivan

Address: Electronic Lead, Babcock DSG Ltd, Defence & Security, Babcock International Group, Building B15, MOD Donnington, Telford, Shropshire, TF2 8JT

Email: Ben.Sullivan@babcockinternational.com

Packaging Design Authority

Organisation & point of contact:

DES IMOC SCP – PKG

Cedar 1a #3139

MoD, Abbeywood, Bristol, BS34 8JH

TEL: +441013067935353

DESIMOCSCP-pkg@mod.uk

(Where no address is shown please contact the Project Team in Box 2)

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

Tel No:

(b) U.I.N.

5. Drawings/Specifications are available from**6. THIS BOX IS INTENTIONALLY 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].

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394

9. Consignment Instructions

The items are to be consigned as follows:

As per Individual Orders

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 No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

www.freightcollection.com**11. The Invoice Paying Authority:**

I&RM Accounts payable, Babcock DSG Ltd, Building B15, Donnington, Telford, Shropshire TF2 8JT

Email: I&RM-accounts payable@babcockinternational.com**12. Forms and Documentation are available through *:**

Ministry of Defence, Forms and Pubs Commodity Management
PO Box 2, Building C16, C Site

Lower Arncott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

Applications via fax or email: DESLCSLS-OpsFormsandPubs@mod.uk**NOTE**

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

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

Schedule 4 - Contract Change Process Procedure (i.a.w. clause A2.b) for Contract No: LSBU15/0126

1. Authority Changes

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

2. Notice of Change

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

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

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 5 – Export Licence (i.a.w. clause A17) for Contract No: LSBU15/0126

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 LSBU15/0126 between the Authority and the Contractor;
- d. “Contractor” means Aeroflex Limited trading on behalf of Cobham AvComm
- e. “First Party” means Babcock international acting as agent for the Authority;
- f. “Second Party” means Aeroflex Limited trading on behalf of Cobham AvComm.

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 **Clause 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 contractor deliverables 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 contractor deliverables or Service to be delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:
 - (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 licence application may be shared with [*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 do so, 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;
- (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

Clause 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 **Clause 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 6 - Hazardous Articles, Materials or Substances Supplied under the
Contract: Data Requirements

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

Contract Number: LSBU15/0126

Contract Title: IFF Mode 5 Ramp Test Sets

Contractor: Aeroflex Wichita Inc, Cobham AvComm

Date of Contract: 20/01/2017

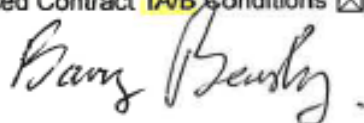
* To the best of our knowledge there are no hazardous Articles, Deliverables, materials or substances to be supplied. ☐

* To the best of our knowledge the hazards associated with Articles, Deliverables, materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:1) attached in accordance with either:

DEFCON 68 ☐ ; or

Condition 9 of Standardised Contract 1A/B Conditions ☒

Contractor's Signature:



Name: Barry Beasley

Job Title: Product Development Manager

Date: 22 February 2017

* check box (☒) as appropriate

To be completed by the Authority

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 7 - Timber and Wood- Derived Products Supplied under the Contract: Data Requirements for Contract No: LSBU15/0126

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

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

Schedule 8 - Acceptance Procedure (i.a.w. Clause F2) for Contract No: LSBU15/0126

Not Applicable for this Requirement

**Schedule 9 - Contractor's Commercially Sensitive Information Form (i.a.w. Clause A14)
for Contract No: LSBU15/0126**

Contract No: LSBU15/0126
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: