



Ministry of Defence

DE&S Digital Commercial

Contract No: 701019373

For:

DESA SALES MANAGEMENT SYSTEM

[REDACTED]

<p>Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</p> <p>Team Name and address: DE&S Digital Commercial Defence Equipment & Support Elm 3B #4342 MOD Abbey Wood Bristol BS34 8JH E-mail Address: [REDACTED]</p>	<p>And</p> <p>Contractor Name and address: Atos IT Services UK Ltd MidCity Place 71 High Holborn London WC1V 6EA E-mail Address: [REDACTED] Telephone Number: [REDACTED]</p>
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1. GENERAL CONDITIONS

1. General

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. 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.
- a. 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.

2. 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.

3. 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.

4. Governing Law

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and 40 (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 4.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 condition 4 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 4.a, 4.b and 4.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 condition 40 (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 condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”Clause 40.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.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 condition 4 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.

5. 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) Conditions 1 - 45 (and 46 - 48, if included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
 - (2) Schedule 2 (Schedule of Requirements) and 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 5.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 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition 40 (Dispute Resolution).

6. Amendments to Contract

- a. Except as provided in condition 31 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 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause 6.a above has been issued.

7. Variations to Specification

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.
- b. Any variations that cause a change to:
 - (1) fit, form, function or characteristics of the Contractor Deliverables;
 - (2) the cost;
 - (3) Delivery Dates;
 - (4) the period required for the production or completion; or
 - (5) other work caused by the alteration,

shall be the subject to condition 6 (Amendments to Contract). Each amendment under condition 6 shall be classed as a formal change.

8. Authority Representatives

- a. Any reference to the Authority in respect of:
 - (1) the giving of consent;
 - (2) the delivering of any Notices; or
 - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this condition 8.
- 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 condition 6 (Amendments to Contract).

9. Severability

- a. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
 - (1) 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
 - (2) 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.

10. 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.

11. 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.

12. Third Party Rights

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

13. Transparency

- a. Subject to clause 13.b but notwithstanding condition 14 (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 13.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 5 – Contractor's Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 13.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this condition 13 shall affect the Contractor's rights at law.

14. Disclosure of Information

- a. Subject to clauses 14.d, 14.e, 14.h and condition 13 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 14.a and 14.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses 14.a and 14.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 clause 14.f, 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.

15. 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.

16. Change of Control of Contractor

- a. The Contractor shall notify the Representative of the Authority at the address given in clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
- b. Each notice of change of control shall be taken to apply to all contracts with the Authority.
Notices shall be submitted to:
Mergers & Acquisitions Section
Strategic Supplier Management Team
Spruce 3b # 1301
MOD Abbey Wood,
Bristol, BS34 8JH
The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns 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.
- c. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.
- d. If the Authority exercises its right to terminate in accordance with clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment

under this clause 16.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

- e. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this condition.

17. Environmental Requirements

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

18. Contractor's Records

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19. 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.

20. Progress Monitoring, Meetings and Reports

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
 - (1) performance/Delivery of the Contractor Deliverables;
 - (2) risks and opportunities;
 - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
 - (4) any other information reasonably requested by the Authority.

SUPPLY OF CONTRACTOR DELIVERABLES

21. Supply of Contractor Deliverables and Quality Assurance

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
 - (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
 - (2) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
 - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
 - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

22. Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 23 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

23. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

- a. Packaging responsibilities are as follows:
 - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
 - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
 - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all subcontractors.
 - (4) Where the Contractor or any of their subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:
 - (1) The Contractor shall provide Packaging which:
 - (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and

- (b) is labelled to enable the contents to be identified without need to breach the package; and
 - (c) is compliant with statutory requirements and this Condition.
- (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
 - (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
 - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 23.i to 23.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
 - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 23.i to 23.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
 - (1) The Health and Safety At Work Act 1974 (as amended);
 - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
 - (3) The REACH Regulations 2007 (as amended); and
 - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
 - (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
 - (2) The Air Navigation Order.
- e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables).
- f. The Contractor shall comply with the requirements for the design of MLP which include clauses 23.f and 23.g as follows:
 - (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.
 - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:
 DES SEOC SCP-SptEng-Pkg
 MOD Abbey Wood
 Bristol, BS34 8JH
 Tel. +44(0)30679-35353
 DESSEOCSCP-SptEng-PKg@mod.uk
 - (b) The MPAS Documentation is also available on the DStan website.
 - (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).
 - (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').
 - (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 SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
 - (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
 - (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 23.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
 - (8) The documents supplied under clause 23.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.
- g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:
- (1) If the Contractor or their subcontractor is the PDA they shall:
 - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 23.f.
 - (b) Where the Contractor or their subcontractor is registered they shall, on completion of any design work, provide the Authority 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 registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 23.g(1)(b).
 - (2) Where the Contractor or their subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
 - (3) Where the Contractor or their subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, he shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 23.g(1)(b).
 - (4) Where the Contractor or their subcontractor is not a PDA but is registered, he shall follow clauses 23.g(1)(a) and 23.g(1)(b).
- h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 or equivalent condition, as appropriate.
- i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
- (1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:
 - (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
 - (b) Each consignment package shall be marked with details as follows:
 - i. name and address of consignor;
 - ii. name and address of consignee (as stated in the Contract or order);
 - iii. destination where it differs from the consignee's address, normally either:
 - (i) delivery destination / address; or
 - (ii) transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
 - iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
 - (i) If aggregated packages are used, their consignment marking and identification requirements are stated at clause 23.l.

- (2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:
- (a) description of the Contractor Deliverable;
 - (b) the full thirteen digit NATO Stock Number (NSN);
 - (c) the PPQ;
 - (d) maker's part / catalogue, serial and / or batch number, as appropriate;
 - (e) the Contract and order number when applicable;
 - (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
 - (g) shelf life of item where applicable;
 - (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
 - (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
 - (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
- (1) the full 13-digit NSN;
 - (2) denomination of quantity (D of Q);
 - (3) actual quantity (quantity in package);
 - (4) manufacturer's serial number and / or batch number, if one has been allocated; and
 - (5) the CP&F-generated unique order identifier.
- k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet).
- l. The requirements for the consignment of aggregated packages are as follows:
- (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
 - (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
 - (a) class group number;
 - (b) name and address of consignor;
 - (c) name and address of consignee (as stated on the Contract or Order);
 - (d) destination if it differs from the consignee's address, normally either:
 - i. delivery destination / address; or
 - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
 - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
 - (f) the CP&F-generated shipping label; and
 - (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an

- alteration to the specification in accordance with condition 7 (Variations to Specification).
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
- o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with condition 18 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
- u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

24. Supply of Hazardous Materials or Substances in Contractor Deliverables

- a. The Contractor shall provide to the Authority:
 - (1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and
 - (2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply. Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:
 - (1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 24.h below, and
 - (2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.
- c. If the Contractor is required, under, or in connection with the contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
- d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
- e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF

STAN 07-085 Design Requirements for Weapons and Associated Systems.

- f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
 - (1) activity;
 - (2) the substance and form (including any isotope);
- g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under Clause 24.a, any information arising from the provisions of Clauses 24.e, 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
 - (1) Hard copies to be sent to:
Hazardous Stores Information System (HSIS)
Defence Safety Authority (DSA)
Movement Transport Safety Regulator (MTRSR)
Hazel Building Level 1, #H019
MOD Abbey Wood (North)
Bristol, BS34 8QW
 - (2) Emails to be sent to: DSA-DLSR-MovTpt-DGHSIS@mod.uk
- i. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

25. 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 25.a, 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
 - (3) 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 comply with the requirements of clause 25.a or 25.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 25.c, the Contractor may satisfy these requirements by giving details of the previous notification

and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.

- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with condition 18 (Contractor's Records).
- g. Notwithstanding clause 25.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 may disclose the Information:
 - (1) 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 25.a or 25.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:
 - (2) verify the forest source of the timber or wood; and
 - (3) assess whether the source meets the relevant criteria of clause 25.b.
- i. The statistical reporting requirement at clause 25.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 condition 6 (Amendments to Contract).
- 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 a 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 Representative (Commercial).
- 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 condition 6 (Amendments to Contract).
- l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
 - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) 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).

26. 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 condition 18 (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 26.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with condition 18 (Contractor Records).

27. Access to Contractor's 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.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 1 are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such subcontractors.

28. Delivery / Collection

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
 - (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (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) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (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 28.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 28.c.

29. 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 30.b has elapsed.

30. 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 30.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 thirty (30) Business Days.

31. 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. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- c. The Authority reserves the right to cancel the Diversion Order.
- d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with condition 6 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

32. 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.

LICENCES AND INTELLECTUAL PROPERTY

33. Import and Export Licences

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
 - (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the 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; and
 - (2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- c. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation 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. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation 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 this information to the Authority's representative.
- e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
 - (1) the Contractor shall, or procure that the Contractor's subcontractor shall, 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 or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
 - (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested

variation.

- f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
- i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
- j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.
- k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
 - (1) a non-UK export licence, authorisation or exemption; or
 - (2) any other related transfer or export control, that imposes or will impose end use, end user or re-transfer or 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 condition 34 (Third Party Intellectual Property – Rights and Restrictions).
- l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- m. If the information to be provided under Clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 33.l.
- n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which it becomes or is aware 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 by issuing an updated DEFFORM 528 to the Authority.
- o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 33.l or 33.m of which it becomes aware 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 by issuing an updated DEFFORM 528 to the Authority.
- p. Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are notified to the Contractor by that subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 10 days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 10 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- q. If the restrictions prevent the Contractor from performing its obligations under the Contract and

have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with condition 6 or 7 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

- r. In the event that the restrictions notified to the Authority pursuant to Clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 33.l, termination under Clause 33.q will be in accordance with condition 43 (Material Breach) and the provisions of clause 33.v will not apply.
- s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any materiel to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- u. Where:
 - (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 33.s or 33.t or both; or
 - (2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of condition 6 (Amendments to Contract) or condition 7 (Variations to Specification) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of condition 42 (Termination for Convenience) and as referenced in the Contract.
- v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

34. 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.
 - (4) Clause 34.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 34.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 provision 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 34.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 Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

- (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 34.a.
- k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.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 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other

- Intellectual Property Right (IPR) owned by a third party;
- (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
 - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
 - (4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
 - (5) following a notification under clause 34.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 condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

PRICING AND PAYMENT

35. Contract Price

- a. The Contractor shall provide 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 condition 35.a 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.

36. Payment and Recovery of Sums Due

- a. The support fee due under the contract is to be paid monthly in arrears.
- b. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- c. Where the Contractor submits an invoice to the Authority in accordance with clause 36a, the Authority will consider and verify that invoice in a timely fashion.
- d. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- e. Where the Authority fails to comply with clause 36b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36c after a reasonable time has passed.
- f. 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.

- g. 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.

37. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of 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 his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. 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 HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where supply of 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. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- 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 within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with condition 40 (Dispute Resolution).
- g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

38. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition 11 (Assignment of Contract), the Contractor may assign to a third Party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 (“the Act”). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition 38 shall be subject to:
 - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f
 - (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 38.b and 38.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 38.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 38.a(1) and 38.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 clauses 38.a(1) and 38.a(2).
- d. The provisions of condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

39. Subcontracting and Prompt Payment

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor’s obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a Subcontract he shall cause a term to be included in such Subcontract:
 - (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
 - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
 - (3) providing that where the Contractor fails to comply with clause 39.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b(2) after a reasonable time has passed; and
 - (4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as clauses 39.b(1) to 39.b(4).

TERMINATION

40. 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 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.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.

41. Termination for Insolvency or Corrupt Gifts

Insolvency:

- a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:
Where the Contractor is an individual or a firm:
 - (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
 - (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
 - (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or
 - (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
 - (6) where the Contractor is either unable to pay his 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 his debts if:
 - (a) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or
 - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
 - (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (8) the court making an award of sequestration in relation to the Contractor's estates.
 - (9) Where the Contractor is a company registered in England:
 - (10) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (11) the court making an administration order in relation to the company; or
 - (12) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
 - (13) the company passing a resolution that the company shall be wound-up; or
 - (14) the court making an order that the company shall be wound-up; or
 - (15) the appointment of a Receiver or manager or administrative Receiver.
Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in clauses 41.a(9) to 41.a(14) inclusive above.
- b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

Corrupt Gifts:

- c. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):
 - (1) offer, promise or give 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 or any other contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- d. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
 - (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
 - (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this condition, 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 performing, the prohibited act;
 - (2) give all 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.
- f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

42. Termination for Convenience

- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) business days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
- b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
 - (1) not start work on any element of the Contractor Deliverables not yet started;
 - (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
 - (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
 - (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b(2) and 42.b(3) of this condition.
- c. Where this condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 42.b):
 - (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
 - (a) in the possession of the Contractor at the date of termination; and

- (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
- (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - (c) all such unused and undamaged materiel; and
 - (d) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
- (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.
- d. The Authority shall (subject to clause 42.e below and to the Contractor's compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
 - (1) the Contractor taking all reasonable steps to mitigate such loss; and
 - (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
- e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:
 - (1) the name of the Contractor shall be substituted for the Authority except in clause 42.c(1);
 - (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) business days; and
 - (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this condition 42.
- g. Claims for payment under this condition shall be submitted in accordance with the Authority's direction.

43. Material Breach

- a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.
- b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (2) obtaining the Contractor Deliverable in substitution from another supplier.

44. 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.

45. LIMITATIONS ON LIABILITY

Unlimited liabilities

Definitions

45.1 In this Condition 45 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

(1) UK GDPR;

(2) DPA 2018; and

(3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

‘DPA 2018’ means the Data Protection Act 2018;

“Law” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in Schedule 10 – Service Level Agreement.

“Term” means the period commencing on the date on which this Contract takes effect and ending on the expiry of three years or on earlier termination of this Contract.

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

45.2 Neither Party limits its liability for;

45.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

45.2.2 fraud or fraudulent misrepresentation by it or its employees;

45.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

45.2.4 any liability to the extent it cannot be limited or excluded by law.

45.3 The financial caps on the Contractor's liability set out in Clause 45.4 and 45.5 below shall not apply to the following:

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

- 45.3.1.1 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
- 45.3.1.2 the Contractor's indemnity in relation to TUPE at Schedule: NOT APPLICABLE;
- 45.3.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
 - 45.3.2.1 the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts);
 - 45.3.2.2 the Authority's indemnity in relation to TUPE under Schedule: NOT APPLICABLE;
- 45.3.3 breach by the Contractor of DEFCON 532A and Data Protection Legislation; and
- 45.3.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
- 45.3.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clauses 45.4 and/or 45.5 below.

Financial limits

- 45.4 Subject to Clauses 45.2 and 45.3 and to the maximum extent permitted by Law:
 - 45.4.1 throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - i. in respect of DEFCON 76 (Contractor's Personnel at Government Establishments) £[REDACTED] in aggregate;
 - ii. in respect of DEFCON 514 (Material Breach) £[REDACTED] in aggregate;
 - iii. in respect of DEFCON 611 (Issued Property) £[REDACTED] in aggregate; and
 - iv. in respect of DEFCON 612 (Loss of or damage to the Articles) £[REDACTED] in aggregate;
 - 45.4.2 without limiting Clause 45.4.1 and subject always to Clauses 45.2, 45.3 and 45.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with service credit/performance and any other relevant provisions, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £[REDACTED] in aggregate.
 - 45.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 45.4.1 and 45.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 45.4.1 and 45.4.2 of this Contract.
- 45.5 Subject to Clauses 45.2, 45.3 and 45.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 45.6 Clause 45.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

- 45.7 Subject to Clauses 45.2, 45.3 and 45.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
 - i. indirect loss or damage;

- ii. special loss or damage;
- iii. consequential loss or damage;
- iv. loss of profits (whether direct or indirect);
- v. loss of turnover (whether direct or indirect);
- vi. loss of business opportunities (whether direct or indirect); or
- vii. damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

- 45.8 The provisions of Clause 45.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 45.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - i. to any third party;
 - ii. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 45.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
 - 45.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
 - 45.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
 - 45.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;
 - 45.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
 - 45.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
 - 45.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
 - 45.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

- 45.9 If any limitation or provision contained or expressly referred to in this Clause 45 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 45.

Third party claims or losses

- 45.10 Without prejudice to any other rights or remedies the Authority may have under this

Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

45.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

45.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

45.11 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

ADDITIONAL CONDITIONS

46. The project specific DEFCONS that apply to this Contract are:

DEFCON No	Version	Description
5J	18/11/16	Unique Identifiers
14	06/21	Inventions And Design Crown Rights And Ownership Of Patents And Registered Designs
76	12/06	Contractors Personnel at Government Establishments
90	06/21	Copyright
91	06/21	Intellectual Property Rights In Software
126	06/21	International Collaboration
129J	18/11/16	The Issue of Electronic Business Delivery Form
503	07/21	Formal Amendments to Contract
522	11/21	Payment and Recovery of Sums Due
531	11/14	Disclosure of Information

532B	04/20	Protection Of Personal Data (Where Personal Data is being processed on behalf of the Authority)
539	01/22	Transparency
601	03/15	Redundant Material
605	11/17	Financial Reports
611	02/16	Issued Property
612	06/21	Loss of or damage to the Articles
620	08/21	Contract Change control Procedure
625	06/21	Co-operation on Expiry of Contract
632	11/21	Third Party Intellectual Property – Rights and Restrictions
658	10/17	Cyber Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Moderate, as defined in Def Stan 05-138.
659A	02/17	Security Measures
660	12/15	Official-Sensitive Security Requirements

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

It is acknowledged that software provided by the subcontractor to the Authority in connection with this Agreement (the “Salesforce Software”) shall be subject to the End User Licence Agreement set out in Schedule 12 hereto (the “EULA”) and in the event of any ambiguity, conflict or inconsistency arising between the EULA and the General Conditions, the EULA will prevail.

48. The processes that apply to this Contract are:

- a. This tasking process which relates to the DESA Sales Management system Potential Future Services as detailed in Part E of Schedule 9 - Statement of Work only, shall only be delivered in accordance with this clause 48a.
 - i. In the event that a Task is required for professional services this shall be agreed between both parties in accordance with Annex A to Schedule 09 - Tasking Order Form Template.
- b. Tasking Process:

- i. Prior to the Contractor commencing DESA Sales Management software professional service provision in each instance, the Parties shall agree specific deliverables, critical acceptance criteria and the number of days of professional service required.
 - ii. In each instance the Contractor shall not commence professional service provision until it has received written authorisation from the Authority Commercial Officer detailed at Box 1 of the Deform 111.
 - iii. For the avoidance of doubt the Authority is not committed to any professional services.
 - c. Travel and Subsistence:
 - i. Travel and Subsistence expenses associated with the provision of Requirement Management Tool professional services will be payable on a reimbursement basis upon the Supplier producing valid receipts and providing that individual expenses are within the caps specified in the Buyer's policy document "Ministry of Defence – Statement of Civilian Personnel Policy – Business Travel GuideV2.0-2019"

49. Formation of contract

49.1 By signing this Contract, the Supplier agrees to enter into a Contract with the Authority.

49.2 The Parties agree that they have read the Contract terms and by signing below agree to be bound by this Contract.

49.3 This Contract will be formed when the Authority acknowledges receipt of the signed copy of the Contract from the Supplier.

Signed	Supplier	Authority
Name	[REDACTED]	[REDACTED]
Title	Client Executive	Senior Commercial Manager

Signature	[REDACTED]	[REDACTED]
Date	8th March 2023	27 February 2023

Schedule 1 - Definitions of Contract

Articles

means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. **(This definition only applies when DEFCONs are added to these Conditions);**

Authority

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

Authority's Representative(s)

shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of condition 8;

Business Day

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

Central Government Body

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:

- a. Government Department;
- b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c. Non-Ministerial Department; or Executive Agency;

Collect

means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;

Commercial Packaging

means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)

Conditions	means the terms and conditions set out in this document;
Consignee	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
Consignor	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Amendments to Contract);
Contract Price	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.
Contractor	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
Contractor Commercially Sensitive Information	means the Information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
Contractor Deliverables	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements

if specified) which the Contractor is required to provide under the Contract;

Control

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

- a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
- b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

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

CPET

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

Crown Use

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

Dangerous Goods

means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);
- b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
- c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
- d. International Maritime Dangerous

	<p>Goods (IMDG) Code;</p> <p>e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;</p> <p>f. International Air Transport Association (IATA) Dangerous Goods Regulations.</p>
DBS Finance	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
DEFFORM	means the MOD DEFFORM series which can be found at https://www.aof.mod.uk ;
DEF STAN	means Defence Standards which can be accessed at https://www.dstan.mod.uk ;
Deliver	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;
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;

Government Furnished Assets (GFA)

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

Hazardous Contractor Deliverable

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

Independent Verification

means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";

Information

means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;

Issued Property

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

Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;
Legislation	means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
Military Level Packaging (MLP)	means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
Military Packager Approval Scheme (MPAS)	is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
Military Packaging Level (MPL)	shall have the meaning described in Def Stan 81-041 (Part 1);
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Notices	shall mean all Notices, orders, or other forms of

	communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	Verb. The operations involved in the preparation of material for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Primary Packaging Quantity(PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: a. pre-consumer reclaimed wood and wood fibre and industrial by-products; b. post-consumer reclaimed wood and wood fibre, and driftwood; c. reclaimed timber abandoned or confiscated at least ten years previously; it excludes sawmill co-products;
Safety Data Sheet	has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);
Schedule of Requirements	means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference,

Contractor Deliverables to be provided, the quantities and 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);

STANAG4329

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

Subcontractor

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

Timber and Wood-Derived Products

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

Transparency Information

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

Virgin Timber

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

Annex A to Schedule 1 – Additional Definitions

API	Application Programming Interface
Authorised User(s)	Any person having been given access to the software by the Authority. This will include, but is not limited to, people within DESA, Front Line Commands and industry partners.
Authority	representative from the Ministry of Defence which may be DE&S or DESA
Authority to Operate (AtO)	means the risks or issues introduced by the service are accepted and the service has proven it can meet the Users needs. The service is authorised to operate within its agreed parameters. Only when the service deviates beyond these parameters will it be required to revisit the release process. An AtO is given to projects following a successful probationary period after the introduction or change to an ICT Service. It is issued by the Network Operating Authority following its assessment of behaviour of the Service.
CE	Capital Equipment Sales – Sales of high value Capital Equipment.
Critical Acceptance Criteria	means Pre-established standards or requirements a product or project must meet.
CS	Commodity Sales – Sale of bulk commodity materiel via pre-existing commodity sale agreements with external contractors.
Data Room	An electronic depository hosted on the AWARD tool and designated as the 'electronic data room' by the Buyer in which information will be stored.
DD	Defence Digital - an organisation within the UK MOD whose responsibility is information and communications technology support for MoD operations and business.
Declaration (Commodity Sales)	A form completed by FLCs or DTs when they wish to have an item collected for sale or disposal. A single declaration could include unlimited items (with or without references to NSNs).
DMC	Defence Management Code. A code made up of the first part of the NSN that can be used to associate an item with a contractor responsible for the disposal.
EDART	Electronic Disposals and Recovery Tool. The current system used by DESA to manage commodity sales.
Firm Price	A price (excluding VAT) which is not subject to variation.
FLC	The single-Service Commands (Navy, Land or Air) responsible for operating, administering or training its forces outside the requirements of joint operations.
Full Operating Capability (FOC)	Means All inputs to JSP604 processes provided in a timely manner.
G2G Sales	Government to Government Sales. Sales of significant assets or whole platforms from one government to another.

G2I Sales	Government to Industry Sales.
GRIEF	Goods Received In Error Form. A form used by contractors carrying out commodity sales indicating that goods have been received in error.
Initial Operating Capability (IOC)	<ul style="list-style-type: none"> - The system meets the minimum operational requirements. These include but are not limited to: - Satisfactory evidence that circ. 200 test declarations have been loaded onto the system for tasking through its contractor base. <p>The creation of circ 20. User Accounts with no accessibility issues.</p>
Interim Authority to Operate (IAto)	Means the approval given by Defence Digital where the risks or issues introduced by the service are known and deemed to be acceptable to allow the system to connect to the network for a probationary period of up to 6 months, to test and verify in the live environment, prior to full AtO being granted.
ITAR	International Traffic in Arms Regulations – US regulations governing the sales of arms including regulations ensuring information regarding the relevant assets is kept secure.
Knowledge in Defence (KiD)	KiD defines how we conduct, govern and control our defence acquisition process and is the primary bearer of all policy and guidance governing defence’s project delivery and commercial functions.
KUR	Key User Requirement.
Maximum Price	A maximum price is a limit or cap on a price set against agreed outputs which should include contingency for risk- it is the highest price agreed between the parties. A price below the maximum is acceptable, and no intervention would follow. All prices are based on actuals.
MI	Management Information.
Milestone Payment	A firm price payment for the achievement of an agreed deliverable that has met the acceptance criteria.
MJDI	Management of the Joint Deployed Inventory – Principle system holding inventory information for the MOD.
MODnet	The ‘official’ IT Network for the Ministry of Defence.
Monthly Service Payment	A Monthly fee paid for provision of the SaaS solution including but not limited to updates to the latest version of the SaaS tool, provision of user training, Technical support and service.
Network Operating Authority (NOA)	The Network Operating Authority (NOA) provides day-to-day operational management of the Defence network, monitoring and managing more than 750,000 configurable IT assets. Network Operating Authority: protects, operates and defends the Defence network thereby preserving its operational capability and integrity.
NLSE	NATO Logistics Stock Exchange.

NSN	NATO Stock Number – Refers to a number which identifies a type of stock item within the above database. A Key identifier for the type of item being disposed of.
OGD	Other Government Departments, including public bodies.
Overseas	All operational and training locations, apart from Germany, to which UK MOD forces deploy. All SMS data manipulation will be in UK £.
PSS	Post-Sales Support team sells inventory to original equipment manufacturers and other Government bodies. Part of the Capital Equipment Sales Team.
RPA	Robotic Process Automation.
RPO	Recovery Point Objective - The maximum targeted period in which data (transactions) might be lost from an IT service due to a major incident.
RTO	Recovery Time Objective - the targeted duration of time and a service level within which access to the service can be restored after a disaster (or disruption).
SaaS	Software as a Service solution – Software provided as per a monthly subscription.
Sales type	The method used to sell an item. This includes but is not limited to G2G sales, Controlled Sales, Ship Disposals Commodity sales and Tender sales.
Service Level Agreement (SLA)	Means a contract between a service provider (either internal or external) and the end user that defines the level of service expected from the service provider.
SMS	Sales Management System.
Tool	A software solution used to support business activity.

Schedule 2 - Schedule of Requirements

Table 1 – Milestone Payments (excluding VAT)

Milestone Payments				
Milestone	Description	Critical Acceptance Criteria	Delivery Date	Milestone Payment Firm Price £ (ex VAT)
0	DESA Sales Management Software Project Kick-Off Meeting	<ul style="list-style-type: none"> - Kick-Off meeting to discuss the implementation of the Sales Management System and to agree delivery dates for Milestones 1(a to d) to 4 (a to b). 	By 17 March 2023	[REDACTED]
1a	DESA Sales Management software and network achieved Interim Approval to Operate	<ul style="list-style-type: none"> - All inputs to JSP604 processes provided in a timely manner. - DD JSP604 – Network Joining Rules approval granted (Authority to Test, Interim Authority to Operate). 	To be agreed and updated following completion of Milestone 0.	[REDACTED]
1b	DESA Sales Management Initial Operating Capability	<ul style="list-style-type: none"> - The system meets the minimum operational requirements. These include but are not limited to: - Satisfactory evidence that circ. 200 test declarations have been loaded onto the system for tasking through its contractor base. - The creation of circ 20. User Accounts with no accessibility issues. 		
1c	DESA Sales Management software and network	<ul style="list-style-type: none"> - All inputs to JSP604 processes provided in a timely manner. - ISS JSP604 – Network Joining Rules Approval to Operate granted by TBC. 	To be agreed and updated following	[REDACTED]

	achieved full Approval to Operate		completion of Milestone 0.	
1d	DESA Sales Management Full Operating Capability	<ul style="list-style-type: none"> - All inputs to JSP604 processes provided in a timely manner. - Defence Digital JSP604 – Network Joining Rules Approval to Operate granted by TBC. 	To be agreed and updated following completion of Milestone 0.	
2	Configuration Complete: Delivery of technical support and guidance to enable alignment with DESA's 'ways of working'.	<ul style="list-style-type: none"> - Confirmation and approval by the Authority that the system has been configured to allow Authorised Users to use the DESA Sales Management software to meet the software requirement. This should include: - successful initial DESA User Testing to include validation of Authorised User access permissions. 	To be agreed and updated following completion of Milestone 0.	[REDACTED]
3	DESA Sales Management software – All data migrated	Confirmation and acceptance by the Authority that the Data Migration has been completed successfully.	To be agreed and updated following completion of Milestone 0.	[REDACTED]
4a	DESA Sales Management system adopted: Initial training complete	Confirmation and evidence by the Contractor that 25% of Authorised Users have been trained to use DESA Sales Management System and appropriate feedback to provide evidence that they are able to operate the system competently including 5 System Administrators.	To be agreed and updated following completion of Milestone 0.	
4b	DESA Sales Management software adopted: Full training complete	Confirmation and evidence by the Contractor that the remaining Authorised Users have been trained to use DESA Sales Management Software and appropriate feedback to	To be agreed and updated following	[REDACTED]

		provide evidence that they are able to operate the system competently.	completion of Milestone 0.	
Total Table 1 Milestone Payments (excluding VAT)				548,956.05

Table 2 – Years 1 – 3 DESA Sales Management Service Fee (excluding VAT)

Please provide your three-year Firm Price Cost Proposal by completing the pricing matrix below:

Item Number	Description	No. Of Authorised Users	Price Per User/Per Month £	Monthly DESA Sales Management Service Fee £	Total Firm Price £ (ex VAT)
1	Year 1 from XXX (IOC) to XXX: Provision of a DESA Sales Management service in accordance with Schedule 9 excluding additional services.	205	[REDACTED]	[REDACTED]	[REDACTED]
2	Year 2 from XXX to XXX:	205	[REDACTED]	[REDACTED]	[REDACTED]

	Provision of a DESA Sales Management service in accordance with Schedule 9 excluding additional services.				
3	Year 3 from XXX to XXX: Provision of a DESA Sales Management service in accordance with Schedule 9 excluding additional services.	205	[REDACTED]	[REDACTED]	[REDACTED]
Total Table 2 - Year 1 – 3 (excluding VAT)					944,886.00

Table 3 – Option Year 1 DESA Sales Management Service Fee (excluding VAT)

Please provide your Option Year 1 Firm Price Cost Proposal by completing the pricing matrix below:

Item Number	Description	No. Of Authorised Users	Price Per User/Per Month £	Monthly DESA Sales Management Service Fee £	Total Firm Price £ (ex VAT)
1	Option Year 1 from XXX to XXX: Provision of a DESA Sales Management service in accordance with Schedule 9 excluding additional services.	205	[REDACTED]	[REDACTED]	[REDACTED]
Total Table 3 Option Year 1 (excluding VAT)					290,427.60

Table 4 – Option Year 2 DESA Sales Management Service Fee (excluding VAT)

Please provide your Option Year 2 Firm Price Cost Proposal by completing the pricing matrix below:

Item Number	Description	No. Of Authorised Users	Price Per User/Per Month £	Monthly DESA Sales Management Service Fee £	Total Firm Price £ (ex VAT)
1	<p>Option Year 2 from XXX to XXX: Provision of a DESA Sales Management service in accordance with Schedule 9 excluding additional services.</p>	205	[REDACTED]	[REDACTED]	[REDACTED]
Total Table 4 Option Year 2 (excluding VAT)					290,427.60

Table 5 - PRICING MATRIX - RATE CARD FOR ADDITIONAL SERVICES

Additional work may be required throughout the Contract duration. The rate card provided will be used to calculate the price of any additional work not included in the Statement of Requirements.

Please provide your Day Rate Card. For the pricing scenario, the total price will be calculated at 10 x SFIA 3 + 5 x SFIA 5 + 1 x SFIA 7 Day Rates. The highest price for each level will be used.

Level (cost per day) / Scope	Interface and Data Uploading Services	Configuration Services	Training Services including face-to-face and tailored training materials	Data Migration Services	Data Archiving Services	Technical Subject Matter Expertise	MoD Data Processing Activities
SFIA 1 Follow	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SFIA 2 Assist	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SFIA 3 Apply	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SFIA 4 Enable	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SFIA 5 Ensure/Advise	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SFIA 6 Initiate/Influence	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SFIA 7 Set Strategy/Inspire	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Travel and Subsistence (T&S) – The day rates should not include T&S. T&S expenses will be based on a maximum day rate against a Limit of Liability. All T&S costs shall be on a reimbursement basis upon the Supplier providing valid receipts up to the limits specified in the Buyer’s policy document “Ministry of Defence – Statement of Civilian Personnel Policy – Business Travel Guide V2.0-2017” (see AWARD Data Room).

Maximum Travel and Subsistence per day:	Bicester maximum: [REDACTED] Bristol maximum: [REDACTED]
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Annex A Schedule 2 – Schedule of Requirement - Assumptions pertaining to Tables 1 – 5

[REDACTED]

Schedule 3 - Contract Data Sheet

<p>General Conditions</p>
<p>Condition 2 – Duration of Contract:</p> <p>The Contract commencement date shall be: TBC</p> <p>The Contract expiry date shall be: TBC</p>
<p>Condition 4 – Governing Law:</p> <p>Contract to be governed and construed in accordance with:</p> <p>English Law <input checked="" type="checkbox"/></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 4.g (if applicable) are as follows:</p> <p>N/A</p>
<p>Condition 8 – Authority’s Representatives:</p> <p>The Authority’s Representatives for the Contract are as follows:</p> <p>Commercial: Ryan Miller <i>(as per Annex A to Schedule 3 (DEFFORM 111))</i></p> <p>Project Manager: Angie Holland <i>(as per Annex A to Schedule 3 (DEFFORM 111))</i></p>
<p>Condition 19 – Notices:</p> <p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: DE&S SE Digital Commercial Team, MOD Abbey Wood, Bristol, BS34 8JH <i>(as per Annex A to Schedule 3 (DEFFORM 111))</i></p> <p>Contractor: The General Counsel (UK&I), Second Floor, Mid City Place, 71 High Holborn, London, United Kingdom, WC1V 6EA</p> <p>Notices can be sent by electronic mail? <input type="checkbox"/> <i>(tick as appropriate)</i></p>
<p>Condition 20.a – Progress Meetings:</p> <p>The Contractor shall be required to attend the following meetings:</p> <ol style="list-style-type: none"> 1. Weekly progress meetings with the DE&S and DESA representatives are required during the implementation phase. 2. Following implementation, monthly progress meetings are required.
<p>Condition 20.b – Progress Reports:</p> <p>The Contractor is required to submit the following Reports:</p> <ol style="list-style-type: none"> 1. Monthly progress reports in accordance with Schedule 10 – Service Level Agreement Reports shall be Delivered to the following email address:

[REDACTED]

Supply of Contractor Deliverables

Condition 21 – Quality Assurance:

Is a Deliverable Quality Plan required for this Contract? (*tick as appropriate*)

If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

Other Quality Assurance Requirements:

Condition 22 – Marking of Contractor Deliverables:

Special Marking requirements: Not Applicable.

Condition 24 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:

A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:

- a) The Authority's Representative (Commercial)
- b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.uk

to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date:

Condition 25 – Timber and Wood-Derived Products:

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 the Authority's Representative (Commercial)

to be Delivered by the following date:

Condition 26 – Certificate of Conformity: N/A

Is a Certificate of Conformity required for this Contract? (*tick as appropriate*)

Applicable to Line Items:

If required, does the Contractor Deliverables require traceability throughout the supply chain?
(*tick as appropriate*)

Applicable to Line Items:

Condition 28.b – Delivery by the Contractor:

The following Line Items are to be Delivered by the Contractor:

Special Delivery Instructions:
Each consignment is to be accompanied by a DEFFORM 129J.

Condition 28.c - Collection by the Authority:

The following Line Items are to be Collected by the Authority:

Special Delivery Instructions:

Each consignment is to be accompanied by a DEFFORM 129J.

Consignor details (in accordance with Condition 27.c.(4)):

Line Items: Address:

Line Items: Address:

Consignee details (in accordance with Condition 22):

Line Items: Address:

Line Items: Address:

Condition 30 – Rejection:

The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:

The time limit for rejection shall be Business Days.

Condition 32 – Self-to-Self Delivery:

Self-to-Self Delivery required? (*tick as appropriate*)

If required, Delivery address applicable:

Pricing and Payment

Condition 35 – Contract Price:

Subject to the Assumptions listed therein, all Schedule 2 line items shall be FIRM Price other than those stated below:

Line Items Clause 46. refers

Termination

Condition 42 – Termination for Convenience:

The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:

The Notice period for termination shall be Business Days

Other Addresses and Other Information (*forms and publications addresses and official use information*)

See Annex A to Schedule 3 (DEFFORM 111)

Annex A to Schedule 3 – DEFFORM 111

(Edn 07/21)

Addresses and Other Information

1. Commercial Officer

Name: [REDACTED]

Address: DE&S Abbey Wood, Bristol, BS34 8JH

Email: [REDACTED]

Telephone: [REDACTED]

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

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

Name: [REDACTED]

Address DE&S Abbey Wood, Bristol, BS34 8JH

Email: [REDACTED]

Telephone: [REDACTED]

9. Consignment Instructions

The items are to be consigned as follows:

3. Packaging Design Authority

Organisation & point of contact:

N/A

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

N/A

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

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

Branch/Name: N/A

(b) U.I.N. N/A

B. JSCS

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

JSCS Fax No. 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk in the first instance.

5. Drawings/Specifications are available from

N/A

11. The Invoice Paying Authority

Ministry of Defence 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

Website is:

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

6. Intentionally Blank

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:

Leidos-FormsPublications@teamleidos.mod.uk

Quality Assurance Representative:

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

AQAPS and **DEF STANS** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit [http://dstan.gateway.isg-r.r.mil.uk/index.html](http://dstan.gateway.isg.r.r.mil.uk/index.html) [intranet] or

*** NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

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

<https://www.dstan.mod.uk/> [extranet, registration needed].



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

Contract No: 701019373

1. Authority Changes

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

2. Notice of Change

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

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

3. Contractor Change Proposal

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

b. The Contractor Change Proposal shall include:

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

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

4. Contractor Change Proposal – Process and Implementation

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

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

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

1. indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Amendments to Contract); or
2. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (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 - Contractor's Commercial Sensitive Information Form
(i.a.w. condition 13)**

[REDACTED]

**Schedule 6 - Hazardous Contractor Deliverables, Materials or
Substances Supplied under the Contract: Data Requirements for
Contract No: 701019373**

NOT APPLICABLE

**Schedule 7 - Timber and Wood- Derived Products Supplied under the
Contract: Data Requirements for Contract No: 701019373**

NOT APPLICABLE

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

Contract No: 701019373

Item Number	Description	Stage	Delivery Date	Acceptance Criteria
0	Kick-Off meeting to discuss the implementation of the Sales Management System and to agree delivery dates for Milestones 1(a to d) to 4 (a to b).	Prior to Go-Live	By 17 March 2023	Kick-Off meeting completed including attendance form the Authority and the Contractor. Agreement of dates relating to Item Numbers 1 to 4 (inclusive). Evidence of completion such as a project implementation plan to be reviewed and accepted by the Authority within 10 working days of receipt. If rejected the Supplier will review the reasons for rejection and resubmit to the Authority within 10 working days.
1	The Contractor shall be responsible for providing the DESA Sales Management software to meet a Go-live date of XXX.	Prior to Go-Live	To be agreed and updated following completion of Item 0.	Go-Live date of XXX confirmed and accepted by the Authority (including DD IAtO, Accreditation, training and data migrated). Evidence of initial DESA Authorised User acceptance testing successfully completed provided to the Authority within 10 working days of the Delivery Date. Evidence of completion reviewed and accepted by the Authority within 10 working days of receipt. If rejected the Supplier will review the reasons for rejection and resubmit to the Authority within 10 working days. Once completion is accepted by the Authority, the Supplier will invoice in

				accordance with the Payment method.
2	Data Migration			
2a	The Contractor shall migrate the data from eDART.	Prior to 'Go-Live'	To be agreed and updated following completion of Item 0.	A report detailing and confirming all data has been migrated to the DESA Sales Management System within 10 working days of the Delivery Date. Evidence of completion reviewed and accepted by the Authority within 10 working days of receipt. If rejected the Supplier will review the reasons for rejection and resubmit to the Authority within 10 working days. Once completion is accepted by the Authority, the Supplier will invoice in accordance with the Payment method.
2b	The Contractor shall import all historical and archived records (from the existing eDART solution) from provided data files maintaining all relationships between data elements. Details of the data to be migrated will be provided at an agreed date during the implementation of DESA Sales Management software.			
2c	The Contractor shall ensure all data integrity is maintained without: <ul style="list-style-type: none"> - missing data; - losing data; and / or - corrupting data. 			
2d	The Contractor shall provide validation of the migrated data.			
2e	The Contractor shall provide full audit documentation for data migration to the Authority			
2f	The Contractor shall conduct initial population of the DESA Sales Management software with all Authorised Users (as identified by the Authority) to enable them to access the system.			

3	Software and Network Approval			
3a	The Contractor shall ensure that DESA SMS conforms to the most recent version of JSP604 Network Joining Rules (an indication of the necessary process for undertaking this is provided within the JSP604 Network Joining Rules Overview in the Data Room).			Approval of milestone by the Authority to include: All inputs to JSP604 processes provided in a timely manner. ISS JSP604 – Network Joining Rules approval granted (Authority to Test, Interim Authority to Operate and full Authority to Operate).
3b	The Contractor shall manage the DESA Sales Management software and network accreditation process in accordance with JSP604, DEF STAN 05-138 ISO 27001/2 principles and industry best practice and demonstrate access from MODNET. This includes the Contractor undertaking any necessary testing and providing documentation to provide evidence in support of the JSP 604 process to achieve an Interim Authority to Operate.	Prior to 'Go-Live'	To be agreed and updated following completion of Item 0.	A report confirming all milestone have been met provided to the Authority within 10 working days of the Delivery Date. Evidence of completion reviewed and accepted by the Authority within 10 working days of receipt. If rejected the Supplier will review the reasons for rejection and resubmit to the Authority within 10 working days. Once completion is accepted by the Authority, the Supplier will invoice in accordance with the Payment method.
3c	The Contractor shall provide suitable technically qualified subject matter experts to support, JSP 604 Network Joining Rules and ISS approvals process (including, Authority to Test, Interim Authority to Operate, Full Authority to Operate and associated accreditation			

	processes) prior to the service going live.			
4	User Readiness and training			
	<p>The Contractor's responsibilities shall include provision of initial training, for all 205 Authorised to enable Authorised Users to competently operate the DESA Sales Management software.</p> <p>Competence is defined here as the ability to operate the system effectively and efficiently, as appropriate to the individual's role without supervision in accordance with the User and System functionality as specified in this SOR.</p>	Prior to 'Go-Live'	To be agreed and updated following completion of Item 0.	<p>A report detailing and confirming all users have been successfully training to competently use the DESA Sales Management System provided to the Authority within 10 working days of the Delivery Date. Evidence of completion reviewed and accepted by the Authority within 10 working days of receipt. If rejected the Supplier will review the reasons for rejection and resubmit to the Authority within 10 working days. Once completion is accepted by the Authority, the Supplier will invoice in accordance with the Payment method.</p>

Schedule 9 - Statement of Requirement

Requirement

A requirement for a single Sales & Customer Management IT Tool (SMS) to:

- Support all DESA's core business activities
- Allow DESA to consolidate as a single business unit,
- Promote continuous business and sales excellence,
- Apply consistent and appropriate governance and control across the business.

The tool shall allow:

- Declaration of materiel by DESA customers.
- Issuing of instructions to and receiving notifications to contractors tasked with collecting and selling materiel on behalf of DESA.
- Providing end to end reporting capability on all sales management activity carried out by DESA and its contractors.
- An information only link to MJDI.
- A link to address information contained in the Defence Locations Data Service.
- Government to Government and Government to industry sale of capital assets
- Sale of parts and other items by the Post-Sales Support team.

Scope

In Scope

- Disposal and Sale of all MoD assets in the UK or overseas (excluding sales from Germany)

Out of Scope

- Links to other MOD systems including CP&F and Web Iris.
- All activity carried out by the DESA Commodity sales teams based in Germany.
- External public facing website.
- Currency Conversions.

Assumptions, Constraints & Dependencies

The following assumptions have been made regarding the requirement:

- All MOD/DE&S staff carrying out declarations will have access to DII or MODNET.
 - OGDs and public bodies using DESA will continue to make declarations by email which will be manually uploaded by DESA.
 - There will be no change to the business model for dealing with commodity sales using contractors.
 - DESA staff will be available to support the requirement.
 - DESA SME Staff will be available to assist in refining new processes to align with the new tool.
 - Provision of an interface from MJDI by DE&S Digital.

Required Deliverables

The DESA requirement is for delivery of a Software as a Service (SaaS) Sales Management & Customer Relationship Management Tool paid for by a Monthly Service Fee:

Part A – The DESA Software as a Service requirement.

Part B – The DESA implementation requirement.

Part C – The DESA Service requirement.

Part D – Security.

Part E – Potential Future Services

Part A – The DESA Software as a Service Requirement

A.1 – Software functionality
A.1.1 - Commodity Sales
<p>The tool shall enable DESA to process declarations of goods requiring collection and sale via a panel of intermediary contractors.</p> <p>Process maps outlining the current high-level process used by DESA can be found in Appendix 1 - Commodity Sales Plan.</p> <ul style="list-style-type: none">• Allow users to declare assets for disposal or sale. Users should be able to declare any number of assets for disposal as part of a single declaration. The tool must allow the bulk uploading of assets for declaration.• Allow reporting against assets based on NSN (NATO Stock Number). The tool shall also be able to process items that do not have an NSN.• Allow Authorised Users to assign a declaration to a collecting contractor and sales route of their choosing.• Prompt users to allocate sales to a collecting contractor based on part of the NSN. The tool shall allow DESA staff to modify which contractors are assigned to which NSN.• Allow the FLC or delivery teams to notify DESA that the collection has been completed, track their disposals, rate the service provided and notify DESA if there is a problem.• Allow tracking of declarations and assets using various criteria. The Authority should be able to define the criteria declarations and assets can be tracked against.• Allow creation of a workflow process by DESA to allow senior users to allocate approval delegations to staff managed and controlled by DESA.• Allow external contractors outside MODNet limited access to notify details of completed and pending collections, including date of collection and notify any

issues with the collection. The tool shall also allow the contractor to notify details of assets sold and to check the amount of stock they hold.

- Allow the bulk updating of sale information against declarations and items using a spreadsheet with a fixed format supplied by the contractor. Each contractor should be able to use their own report format.
- Allow the creation of documents based on standard templates defined by DESA and information held within the system.

A.1.2 – Capital Equipment Sales

The tool shall enable DESA to directly manage sales of capital assets. The tool shall facilitate tracking of the sale from identification of the sales opportunity to post-sales support.

A process map outlining the current process can be found in Appendix 2 - Capital Equipment Sales.

- Provide for tracking and management of capital equipment sales
- Allow for the creation of documents based on standard templates and information held within the system.
- Allow for tracking potential equipment coming up for sale.
- Allow for equipment and market constraints to be recorded and tracked against a sale.
- Allow for checkpoints and approvals to be set and tracked at relevant points through the sales process and tracked throughout the sales process.

A.1.3 – Dashboards and reporting

Dashboards	<ul style="list-style-type: none"> • Provide dashboard reports to track capital asset and commodity sales activity. • Provide user configurable dashboards -The tool should provide dashboards that can be configured by the user to display information contained within the system.
Reports	<ul style="list-style-type: none"> • Provide a suite of reports as part of the standard offering including but not limited to: Revenue generation, number of items processed, and the number of days taken to complete each collection and sale. Data should be reportable by date, declaration number, contractor, FLC and item value. • Allow for reporting of declarations and individual assets against: <ul style="list-style-type: none"> ○ The user the declaration is currently assigned to ○ The team the declaration is currently assigned to ○ Sales type ○ Value ○ Current status within workflow ○ Location

	<ul style="list-style-type: none"> ○ Description ● Allow for the scheduled creation and storage of reports. ● Allow for the ad-hoc creation of customisable reports ● Provide reporting on contractor performance.
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A.1.4 – Integration	
	<ul style="list-style-type: none"> ● Allow a configurable export of data from the tool to a Microsoft Power BI platform held within MODNet ● Provide interfaces i.e., API to allow data import and export from MOD systems

A.1.5 – System administration functionality	
<p>The Service shall enable Authorised Users assigned to the system administration role to perform routine system administration tasks.</p> <ul style="list-style-type: none"> ● Add, change or remove Authorised Users assigned to licences ● Allocate groups of permissions to an Authorised User. ● Conduct archiving activities. ● Define permission level groups for authorised users. ● Set-up and maintain user look-up lists. ● Set up and maintain approval delegations 	

A.2 – Compliance	
Compliance with Good Industry Standards and Legislation	<ul style="list-style-type: none"> ● Ensure full compliance with all UK legislation for the SaaS solution for the duration of the contract.
Technical Compliance	<p>The Suppliers SaaS Solution shall be compliant with the following client software requirements:</p> <ul style="list-style-type: none"> ● Be compatible with Windows 7 and Chrome (Current version 72.0.3626.121). ● Be compatible with IE11 (Current version 11.0.9600.19431CO) ● Be compatible with Windows 10, Edge and latest version of Chrome.
Accessibility	<ul style="list-style-type: none"> ● Provide and interface that supports the needs of users with disabilities and complies with Web Content Accessibility Guidelines (WCAG) 2.1 Level AA or an equivalent standard.
Compliance with industry standards relating to infrastructure, personal data and information security.	<ul style="list-style-type: none"> ● Hold an appropriate Quality Management Certification such as ISO 9001:2015, or an equivalent industry specific standard such as ISO27001:2013, issued by a UKAS accredited 3rd party certification body or equivalent OR

	<p>If the supplier is not currently accredited against ISO 9001:2015 or ISO27001:2013 or a similar accreditation standard, then they must be prepared to do so within 15 working days of any contract being signed</p> <ul style="list-style-type: none"> • Demonstrate compliance with the following accreditations or an equivalent standard: - <ul style="list-style-type: none"> ○ SOC 2 – Trust ○ ISO 22301 – Business Continuity. ○ ISO 27001 – Information Security Management. ○ ISO 27018 – Protection of Personal Data in the Cloud. ○ PCI DSS – Payment Security.
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Part B – The DESA Implementation Requirement

B1 Software as a Service Deliverable:

- Provide access to the system for up to 200 concurrent users based on their user permissions.
- Provide access to the system of up to 5 System Administration users
- Provide access to an unlimited number of MODNet users, (not to exceed 150 at one time), to raise declarations. This may be via an online portal accessible from MODNet or via an alternative solution.

B2 - Software Accreditation Support.

- Provide information and suitably technically qualified subject matter experts to enable the Authority to achieve MOD JSP 604 network joining rules and DD approvals for Service by the agreed Go-Live date including
 - An Information Exchange description.
 - System Description.
 - System Diagram.
 - Deployment Plan.
 - Authority to test.
 - Authority to operate.
 - High Level Design.

Other technical support from the Suppliers subject matter experts may be required to join the network.

B3 SaaS Solution Configuration Support for Go-Live:

- Provide an initial configuration to enable MOD to benefit from the Service offering the ability to manage sales and disposals in MOD by the agreed Go-Live date.
- Provide a package of customised dashboards defined in collaboration with DESA including at least one at individual user, team, and DESA wide level.

B4 Process design and alignment with the SaaS Service.

- Provide technical support and guidance on aligning DESA's ways of working to the SaaS Solution.

<ul style="list-style-type: none"> • Include but not be limited to providing business analyst and process design support to workshops and production of documentation outlining new business process to support DESA sales activity.
<p>B5 Data Migration Deliverable:</p> <ul style="list-style-type: none"> • Migrate all Data from the legacy E-Dart system to the new SaaS tool. <ul style="list-style-type: none"> ○ Include but not be limited to Data provided in a .csv or equivalent format and any files containing attachments associated with the documents.
<p>B6 Integration Deliverable:</p> <ul style="list-style-type: none"> • Provide technical assistance on configuring existing API or other integration functionality within the tool to link existing MOD systems.
<p>B7 User Training:</p> <ul style="list-style-type: none"> • Provide training to enable Authorised Users to competently operate the Service. • Include training on premises as well as online training material. • Include but not be limited to: <ul style="list-style-type: none"> ○ Up to date Online training material ○ Access to an area hosting the most recent version and DE&S configuration for the system where they can carry out training exercises without risk of affecting current live data thought the lifecycle of the contract.

Part C – The DESA Service requirement.

<p>C1 Software as a Service Technical Support:</p> <ul style="list-style-type: none"> • Provide technical support for their tool. • Provide technical support in accordance with their proposal to the Authority's support desk staff, Monday to Friday, 09:00 to 17:00 hrs. <ul style="list-style-type: none"> ○ Telephone support should be available between 09:00 and 17:00hrs ○ Comply with Information Technical Infrastructure Library (ITIL 2011) best practices, including incident, problem and change management. ○ Allow a user to the ability to log out of hours faults.
<p>C2 Updates and Upgrades:</p> <ul style="list-style-type: none"> • Enable access to the latest functionality and updates created for the tool for the duration of the contract. • Provide details of the methodology for deploying regular scheduled and security critical updates to their system. • Apply any security related updates within 2 working days of becoming available. • Provide details of their process for deploying updates and upgrades to the tool. • Provide documentation confirming the full scope of any changes for each update and must provide access to a secure environment set up using DESA's configuration and data to allow the update to be tested. Regular secluded updates must be made available for testing at least 2 months before the update is due to go live.
<p>C3 Service Levels</p> <ul style="list-style-type: none"> • The service must provide: <ul style="list-style-type: none"> ○ Core hour availability (8AM - 5PM Monday to Friday excluding UK Public Holidays) – 99.5% availability. ○ Non-core hours availability (5PM - 8AM and non-working days) – 90% availability. • Provide incident recovery measures to ensure: <ul style="list-style-type: none"> ○ No service incident should prevent DESA from carrying out sales activity for more

- than 5 working days.
- Temporary measurers to allow DESA to carry out sales with restricted functionality should not be required for more than 25 working days.

C4 Disaster Recovery\Business Continuity:

- The supplier must inform the Authority about any security incident
- The supplier must have a Business Continuity and Disaster Recovery (BCDR)Plan. It should set out how the supplier meets the requirement detailed below:
 - How disaster recovery methods are tested.
 - In the event of a disaster full service should be recovered against an RPO of one day (100% of service capability and data recovered) and RTO of 3 calendar days.
 - The supplier should provide evidence to show that the disaster recovery plan has been successfully completed.

C5 Exit Strategy

- Provide all stored data in an open-source data format and ensure that the data is not compromised during the exit process.
- Support the Authority to facilitate the transition of the data to a new service provider or with minimum disruption and inconvenience and in accordance with an agreed Exit Plan.
- Outline how they would facilitate exit arrangements at the end of the contract.

Part D – Security

D1 Security Cleared Supplier Personnel:

- All personnel responsible for providing a service to the Authority or with access to the Authority’s data must be cleared against Baseline Personnel Security Standard (BPSS) at contract award as a minimum.

D2 Compliance with Security Standards

- Be Compliant with Cyber Essentials Plus or an equivalent standard of security accreditation.
OR

If the supplier is not currently accredited against Cyber Essentials Plus or a similar accreditation standard, then they **must** be prepared to do so within 15 working days of a contract being signed

D3 SaaS Solution – Hosting:

M3. The supplier **must** ensure that any hosting of data shall not be on facilities outside the United Kingdom.

D4 Government Standards

- The tool may be used to hold data with a classification up to Official Sensitive. The

tool and any accompanying services offered must comply with the Following Ministry of Defence Joint Service Publication (JSP) standards:

- JSP 604 - Defence Manual for ICT
- JSP 440 - Defence Manual of Security and Resilience*

*JSP 440 is a classified document and is not publicly available. Suppliers should identify how they would comply with [HMG Security Policy Framework \(SPF\)](#). The Authority will seek further clarification as required.

Part E - Potential Future Services

In order to support potential future Customer Relationship Management (CRM) activity across DE&S, the Authority seeks the option to extend use of the tool to other parts of DE&S's business. The Authority fully reserves the right not to exercise part or all this option. The full detail and scope of any future work will be subject to a quotation provided by the Supplier and agreed to by the Authority. Funding for any services provided under this section shall be subject to separate internal approval by DE&S.

The additional potential services that may be required include:

- Additional user accounts for user's outside DESA on a cost per user basis. As part of the tender, the supplier should provide the potential cost for each additional user.
- A separate instance(s) to be created to handle CRM management activity across DE&S.
- Allow user access to information relating to non-DESA CRM activity to be isolated from DESA related activities.
- Support configuration of functionality to meet each area's requirements on request. As part of the tender, the supplier shall supply a rate card which will form the basis of any future quotations.
- Each additional instance shall be subject to its own internal approval and funding arrangement.
- Any new instance should support the same functionality as is available for the DE&S instance. This should include but not be limited to:
 - Allowing for the creation of documents based on standard templates and information held within the system.
 - Allowing for checkpoints and approvals to be set and tracked at relevant points through a defined process.
- Providing user configurable dashboards -The tool should provide dashboards that can be configured by the user to display information contained within the system.
- Allowing for the ad-hoc creation of customisable reports
- Allow the FLC or delivery teams to track activity on their work, rate the service provided and notify DE&S if there is a problem.

The total value of any work carried out under this option shall not exceed £5 million.

Appendix 1 - Commodity Sales Plan

[REDACTED]

Purpose: The purpose of this process map is to identify the activities associated with the DESA Business Gateway assigning business as usual tasks to DSS for disposal, and sales opportunities to sales delivery teams for development

Establish Declaration

[REDACTED]

Purpose: To identify the intricacies behind the process-flow associated with the DESA business as usual declaration process.

Raise Goods Received in Error Form (GRIEF)

[REDACTED]

Purpose: The purpose of this diagram is to identify the activities associated with the DESA Goods Received In Error (GRIEF) process

Monitor Contractor Collection

[REDACTED]

Purpose: The purpose of this process map is to identify the process-flow associated with the DESA collection monitoring process.

Appendix 2 - Capital Equipment Sales

[REDACTED]

Develop Sales Opportunity

[REDACTED]

Purpose: To Identify tasks when sourcing potential customers and obtaining approval for the sale of MOD assets

Annex A to Schedule 9 - Task Order Form Template

Tasking Order Form for Contract No: 701019373

To:

Part 1: Buyer Requirement

TASK ID:	Task Name:
Date Raised:	Delivery Required:
PO Number:	

Statement of Work (including Deliverables and Acceptance Criteria):

DELIVERABLES DESCRIPTION:

DELIVERY DATE:

ACCEPTANCE CRITERIA

<u>SERIAL</u>	<u>OUTPUT DESCRIPTION</u>	<u>Outcome</u>	<u>ACCEPTANCE CRITERIA</u>

1.			
2.			
3.			

Important Notes for Supplier:

T&S (**is / is not**) envisaged for this tasking.

Maximum cost inclusive of VAT should not exceed (xxxxxxx)

All supplier personnel engaged on this task to have SC level of clearance or be working towards obtaining SC clearance. Details of the personnel responsible for the performance of the proposed outputs needs to be provided to DE&S. These details will be used to confirm SC status and for the on-boarding process to gain MODNET access and site passes for MOD Abbey Wood. Access to Abbey Wood not currently permitted due to COVID-19 restrictions.

Part 2: Supplier Proposal

OVERVIEW OF SUPPLIER DELIVERY

[Supplier to outline how they will deliver the Part 1 – Requirement above]

PAYMENT PLAN: [Supplier to propose a payment plan that allows for progress payments against the deliverables required to deliver this task and to be invoiced in arrears. At least 25% of the overall fee should be allocated to the final deliverable. Prices in accordance with rate card provided at Annex B]

Deliverable	Delivery Date	Amount £ excl. VAT

(*Maximum Cost – Part 1 above)

The above payment plan is based on the Supplier's assessment of the following recourses required to deliver the outputs:

SFIA Level	Day Rate	Days	TOTAL MAXIMUM PRICE (ex VAT)
TOTAL MAXIMUM PRICE (ex VAT)			£

Acceptance Criteria and Payment Plan:

Payment is dependent on the delivery of the deliverables as per Part 1 - Requirement and achievement of the acceptance criteria for each deliverable. Payment will be made in arrears. All deliverables need to be confirmed by the Buyer's representative for the Tasking Order Form as having met the acceptance criteria. If not accepted the Buyer shall identify what rectification is needed by the Supplier for the outputs to be accepted. If rectification is not possible a reduction in price should be agreed between the Parties and payment against the outputs will be deferred until such agreement has been reached.

Travel & Subsistence (T&S)

<u>Description</u>	<u>Maximum £ (incl. VAT)</u>
Expenses T&S (maximum) supported by receipts, travel expenses allowable from usual place of residence to MoD, Bristol Abbey Wood or other work site as approved by MoD DE&S.	

Part 3. Buyer Authorisation

Note: The Supplier shall not proceed with the Tasking Order Form until a fully authorised Tasking Order Form has been received

SUPPLIER ACCEPTANCE	NAME:	
	SIGNATURE:	
	TITLE:	
	DATE:	

BUYER REPRESENTATIVE AUTHORISATION	NAME:	
	SIGNATURE:	
	TITLE:	
	DATE:	

BUYER COMMERCIAL AUTHORISATION	NAME:	
	SIGNATURE:	
	TITLE:	
	DATE:	

Part 4. Buyer Task Completion Confirmation

Note: A copy of the finally authorised form should be provided to the commercial POC of this contract - for the contract file and to release final payment to the supplier.

I the Buyer Representative confirm that all Deliverables for Task (xxx) under Contract 701019373 have been delivered and met the acceptance criteria for each deliverable and / or any agreed rectification has been taken. I understand that by signing this Task Order Form the payment for the final deliverable should be released to the Supplier. Please provide any comments as to any rectification activity that was required in the delivery of this Task.		
BUYER REPRESENATIVE AUTHORISATION	NAME:	
	SIGNATURE:	
	TITLE:	
	DATE:	

Schedule 10 – Service Levels, Service Level Agreements and Service Credits

Definitions

Service Credits	means service credits being applied to reduce the monthly charge for the DESA Sales Management service should the Service Level Agreement or system administration SLA not be met.
Service Levels	means the level of service provided by the Contractor.
Service Level Failure	means a failure to meet the agreed Service Level.

Service Level Agreement (SLA) and system administration SLA

The Service Level Agreement (SLA) as per Annex A of this Schedule 10 sets out the Service Levels which the Contractor is required to achieve when providing the DESA Sales Management service in accordance with Schedule 2, the mechanism by which Service Level Failures will be managed and the method by which the Contractor's performance in the provision by it of the DESA Sales Management services will be monitored. The system administration SLA as per Annex B of this Schedule 10 sets out the Service Levels which the Contractor is required to achieve when providing the DESA Sales Management system administration service in accordance with Schedule 2, the mechanism by which Service Level Failures will be managed and the method by which the Contractor's performance in the provision by it of the system administration services will be monitored. Failure to meet the Service Levels in either SLA will result in Service Credits to the Authority which shall reduce the monthly charge for the DESA Sales Management service as per Schedule 2, Table 2, 3 and 4 – DESA Sales Management Service Fee. Service credits shall not be applied until the Go-Live Date has been met.

Service Credits

Service Credits are a reduction of the monthly fee payable in respect of the Contractor Deliverables and do not include VAT. The Contractor shall off-set the value of any service credits against the monthly charge for the DESA Sales Management service.

Annex A.1 to Schedule 10 – Technical Support

1 Introduction

The DESA Sales Management Technical Support Service is aligned with the ITIL role separation model for Incident Management, as detailed in Figure 1, which focuses primarily on handling and escalating incidents as they occur. The Contractor's goal is to take user incidents from a reported stage to a satisfactory closed stage, where Problem Management is responsible for finding and removing the root cause of repeated incidents and change management implements the changes necessary to achieve it.

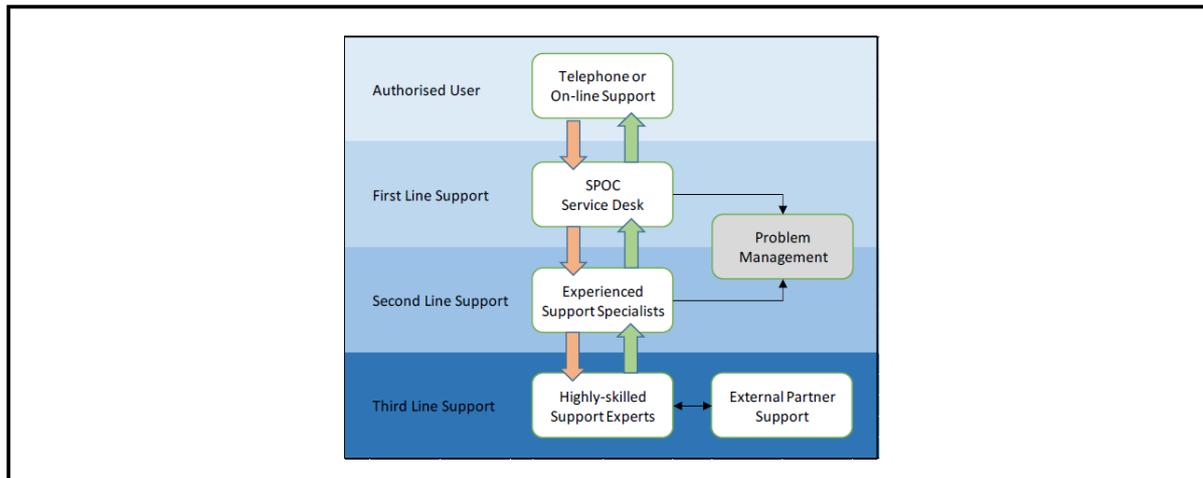


Figure 1: Levels of Technical Support

The Technical Support Service provides:

- Technical Support available via telephone, operating between the hours of 9:00 am to 5:00 pm, Monday to Friday (excluding Bank Holidays) or a 24/7 Online support Facility.
- Ability to log out of hour faults, available on a 24/7 basis.
- A Single Point of Contact (SPOC) through which to access all technical support.
- ITIL-based support framework and processes.

2 Service Desk

2.1 Operation

The DESA Sales Management Service provided by the Contractor shall include the provision of Technical Support, operating as the Single Point of Contact (SPOC) for all technical support inputs. The Service Desk will be available to Authorised Users via a dedicated contact telephone number, Monday to Friday (excluding public holidays) between the hours of 9:00 am and 5:00 pm and will be staffed by experienced support personnel with knowledge of the managed service, hosting, processes and the key roles involved. The Service Desk will provide 1st Line support to all Incidents, but, depending on the complexity of the Incident, will also conduct certain Second Line support activities, such as data integrity issues. They will also escalate Incidents, Problems and Service Request to 2nd and 3rd Line support. In addition,

Authorised Users will be able to contact the Service Desk to obtain information on major outages, interruptions to the Service and planned maintenance down-time.

2.2 Performance

Performance metrics applicable to the provision of the Service Desk are detailed within the Service Level Agreement (SLA) at Annex A.2 to Schedule 10.

3 Online Support Facility

An Online Support Facility (OSF) shall be provided by the Contractor, which Authorised Users access from MODNET and approved Industry partner IT systems. The facility will be available continuously and will enable Authorised Users to raise new Incidents and Service Requests and view their status and progression through the life-cycle. Authorised Users will also be able to view information on major outages, interruptions to the Service and planned maintenance down-time. Incidents reported through the OSF will be acknowledged by the Service Desk and, dependent on the origin and type of the Incident, will be prioritised and then either resolved by the Service Desk or assigned to an appropriate level of support for resolution. Visibility of the progression and status of incidents will be provided on the Online Support Facility.

3.1 Performance

Performance metrics applicable to the provision of the OSF are detailed within the SLA at Annex A.2 to Schedule 10.

4 SPOC

A Contractor SPOC shall act as the controlling function for all technical support requests. The Service Desk is at the centre of the SPOC, satisfying the ITIL best-practice for Incident Management, where the Service Desk manages the lifecycle of all incidents, ensuring an appropriate priority is applied to them, escalating as required to an appropriate line of support and communicating progress to the Authorised User. An ancillary feature of this structure is the collection and collation of incident trend data to support effective Problem Management. The SPOC will act as the communication hub between Authorised Users and technical support elements within the Contractor.

5 Technical Application and Infrastructure Support

The Contractor shall deliver application and infrastructure support by integrated teams, as detailed in Figure 2. Technical support shall be available to respond to service incidents, problems and requests on a 24/7 basis.

5.1.1 1st Line Support

The Service Desk assumes responsibility for all 1st Line technical support for reported Incidents by conducting the following activities:

- Incident logging and acknowledgment, ensuring all relevant information has been provided.
- Incident categorisation and prioritisation.

- Initial diagnosis; validation of an Incident to identify the scope of the requirement, to establish if it is related to user permissions, access control, change requirement or non-conformance and whether escalation to Second Line is required.
- Escalation, if necessary, to 2nd or 3rd Line support.
- Incident resolution: the Service Desk personnel are suitably qualified and experienced to conduct first line diagnostics on DESA Sales Management service.
- Incident closure; by applying a routine resolution (as applicable to Service Desk skillset and experience).
- Communication with the Authorised Users throughout the life of the Incident.

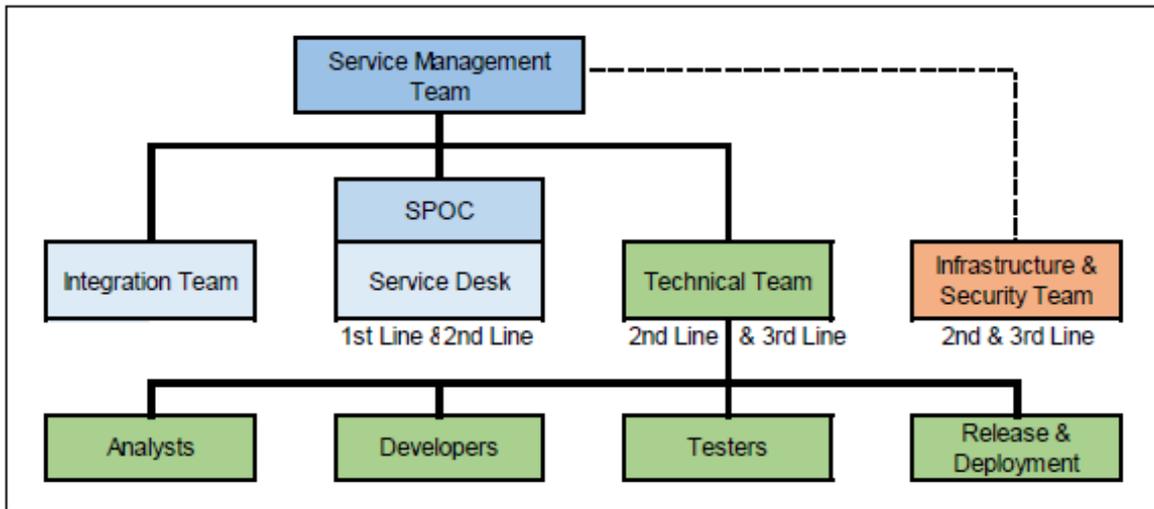


Figure 2: Application and Infrastructure Support

5.1.2 2nd Line Support

Where an Incident or Request is beyond the capability of the Service Desk, as it involves a more complex resolution that requires an elevated level of skill, training and experience, it will be escalated to 2nd Line technical support. The Technical Team, comprising software analysts, developers, testers and release/deployment engineers, overseen by the Service Operations Technical Lead, will be engaged to confirm initial diagnosis and conduct incident resolution and closure. Further diagnosis at 2nd Line involves deeper analysis to validate the Incident to confirm the scope of the requirement and to establish if it is a change request or non-conformance. Investigative activities may include the replication of incidents or problems on a representative test system, capture steps to reproduce and establish if the Incident is across multiple Air Systems or related to a specific capability or role, or if related to a configuration, data or software code issue. Based on the outcome of investigation, a minor configuration change will be addressed by Second Line resources, whereas a major resolution will be escalated to Third Line.

5.1.3 3rd Line Support

3rd Line support will engage both the Technical Team and internal and external infrastructure support elements, as necessary. It will expand the 2nd Line investigation findings and determine the root causes, using product designs, code or specifications and, if applicable, may require the support of external organisations, such as the Contractor's sub-contracted hosting partner (if applicable), who will be engaged through the Infrastructure and Security

(I&S) Team. The outcome of such an investigation will confirm if a minor or major resolution is required and a subsequent and appropriate resolution will be provided in accordance with the Contractor's change management process.

5.2 Incident Management

The Contractor shall apply an Incident Management process providing resolution to unscheduled service interruptions, in order to maintain a high quality of service. Authorised Users report Incidents to the SPOC via telephone or through and Online Support Facility. An appropriate resolution route is taken, depending on the scope and scale of the incident.

5.2.1 Incident Categorisation and Prioritisation

The Contractor shall categorised and prioritise Incidents as Levels 1 to 4, depending on the number of Authorised Users affected and the assessed impact, as detailed in Table 1. This triaging system aims to minimise the time that an incident affects the Users' ability to utilise all functionality within DESA Sales Management System. The performance metrics associated with Incident resolution are detailed in the Service SLA at Annex A.2 to Schedule 10.

Level	Users Affected	Impact
P1	Multiple	Major Service Outage – Complete loss of service function across multiple sites.
P2	Multiple	Service Outage – Complete loss of service function at a single site.
P3	Multiple	Incident causing loss of full or partial DESA Sales Management System functionality where there are multiple users.
P4	Single	Incident causing loss of full or partial DESA Sales Management System functionality where there is a single user.

Table 1: Incident Categorisation and Prioritisation Matrix

Annex A.2 to Schedule 10 –Service Level Agreement

1 Introduction

This document details the Service Level Agreement (SLA) for the Contractor provided DESA Sales Management service; it explains the key services provided and the quality principles (contained in JSP604, DEF STAN 05-138, ISO27001) delivered to provide Authorised Users with the contractually agreed service levels. The Contractor' performance will be measured by the Authority on a monthly basis and used to justify service payments and any remedial action required.

This SLA sets out the following:

- The services provided to DESA Sales Management System Authorised Users.
- The overall standards to be achieved covering:
 - Service availability
 - System availability
 - Performance levels
 - Incident resolution times
 - Service Level reporting metrics
 - Service Credits
- How the SLA will be managed, measured and reported.
- The mechanism for addressing any problems related to the provision of the DESA Sales Management service

2 Objectives of the Service

The objective of the service provided by the Contractor is to meet the requirements detailed within Schedule 2 - Statement of Requirement.

3 Responsibilities

The Contractor shall provide the DESA Sales Management service under the direction of the Contractor's Service Management Team. An Account Manager is allocated by the Contractor to this service and is the point of contact for all enquiries from the Authority on Service performance or contractual matters. The Account Manager will attend the Monthly Contract Management meetings at the Authority's Offices in Bristol or remotely via and online meeting as agreed between the Parties. The Authority will endeavour to give 10 working days' notice before the monthly contract management meeting.

If any issues cannot be resolved to the Authority's satisfaction by the DESA Sales Management Account Manager they will be escalated to the Service Management Team to agree a path to resolution with the Authority.

4 Service Level Agreement

The DESA Sales Management service shall have a Service Availability of [REDACTED] % and a System Availability of [REDACTED] %.

4.1 Service Availability

The DESA Sales Management service provided by the Contractor shall be available to the Authorised Users on a 24 hour basis for 365 days-a-year to the agreed availability level below.

Service Availability in this context is defined as an Authorised User being able to access the DESA Sales Management service at the performance levels that meet the ability to:

- Login to the system within 5 seconds
- Loading the front page within 5 seconds
- Loading of a blank issue /entity form / screen within 5 seconds
- Loading of main user dashboard within 10 seconds
- Returning search results of a query within 10 seconds

4.1.1 User Access Service Availability

The minimum performance required in accordance with Annex A to this SLA will be maintained. The Agreed Service Time (AST) will be calculated on a monthly basis according to the following formula:

Agreed Service Time = (24 hours x Calendar Days in the Month) – (Hours PDT) – (Hours DTOS)

Planned Downtime (PDT) is defined as those periods of planned maintenance where the Authority has been given at least 3 days' notice. Any system will require pre-planned maintenance, and this will be kept to the minimum required and conducted where possible out of normal working hours.

Downtime Other Systems (DTOS) is defined as downtime whether planned or unplanned for those systems outside the control of the Contractor i.e. MoDNET. the Contractor monitors notifications from the Global Operations and Security Control Centre (GOSCC) Planned Outage Cell and will notify Authorised Users when any outage will affect the DESA Sales Management service.

Service Availability is calculated based on the Agreed Service Time (AST), and the unplanned downtime (UDT), according to the formula.

$$\text{Service Availability} = \frac{\text{AST} - \text{UDT}}{\text{AST}} \times 100\%$$

Unplanned Downtime (UDT) is defined as any period of time where an Authorised User is unable to access the service outside those identified in PDT and DTOS.

4.1.2 Training Service Availability

The training available for DESA Sales Management System as provided by the Contractor is detailed in the Training Plan and explains the methods used.

Information will be provided monthly on the number of new users that have received training against the number of new users created.

4.2 System Availability

System Availability is defined as the full functionality of the toolset being available to all Authorised Users. The Contractor endeavours to maximise the time that this is achieved by applying quality processes to any required releases and actively monitor for any impact on the quality of service.

The Contractor's Service Desk prioritises incidents and where appropriate applies workarounds to restore the service functionality until such time as a final resolution is delivered. This workaround allows Authorised Users to conduct their full range of functions albeit potentially using slightly different methods to the normal operating process.

System Availability is calculated according to the following formula:

$$\text{System Availability} = \frac{\text{AST} - \text{ITL}}{\text{AST}} \times 100\%$$

Agreed Service Time (AST) is the same calculation as for Service Availability in paragraph 4.1.1 above.

Incident Time Lost (ITL) is the hours lost due to an incident prioritised in any of the P1-P4 categories as identified in paragraph 4.4 that have exceeded the given resolution time.

4.3 Performance Levels

The required performance levels for Authorised Users utilising the DESA Sales Management service have been defined and are listed below:

- Performance levels that meet the ability to:
 - Login to the system within 5 seconds
 - Loading the front page within 5 seconds
 - Loading of a blank issue /entity form / screen within 5 seconds
 - Loading of main user dashboard within 10 seconds
 - Returning search results of a query within 10 seconds

4.4 Incident Resolution Times

Incidents will be reported to the Contractor will be processed in line with the process detailed in Annex A.1 to Schedule 10. The severity of the incidents are described in Table 2 below and the aim is to use this triaging system to minimise the time that an incident is affects the Authorised Users' ability to utilise all functionality within DESA Sales Management System.

Level	Users Affected	Impact	Service Restoration Time
P1	Multiple	Major Service Outage – Complete loss of service function across multiple sites.	2 Hours
P2	Multiple	Service Outage – Complete loss of service function at a single site.	6 Hours
P3	Multiple	Incident causing loss of full or partial DESA Sales Management System functionality where there are multiple users.	24 Hours
P4	Single	Incident causing loss of full or partial DESA Sales Management	48 Hours

		System functionality where there is a single user.	
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Table 2: Incident Priority

Incidents reported through the online support facility will be accepted by the Service Desk and receipt will be acknowledged within one hour.

4.5 Service Credits

The DESA Sales Management service performance will be measured every month using the measures in Annex A. If more than one performance measure is not achieved in any one month the Service Credit of [REDACTED] % of the Monthly Service Fee will be applied to the following month's service charge.

Where the same performance measure fails to be met for three months in a row the Service Credit of [REDACTED] % of the Monthly Service Fee will be applied even if that is the only measure that is not achieved.

The Contractor is responsible for measuring the performance against the SLA and presenting these to the Authority to be considered at the monthly Contract Management meeting.

Occasionally, the cause of service level failures will be outside the control of the Contractor; consequently, the following conditions apply:

- Specific acts or omissions by the Authority or its Authorised Users that cause a service level failure are excluded from the service level performance calculations
- Where the failure relates to aspects outside the control of the Contractor such as the availability of non the Contractor infrastructure (i.e., MODNET) then these will be excluded from the service level performance calculations
- When the sample size that is used for calculating for the service performance is small, any deviation can have a significant impact on performance. For example, two events with one pass and one a fail will lead to performance of 50%. Therefore, where the number of events is fewer than 20, the performance for service credit purposes will be assumed to be 100%. The performance in this instance can be reviewed over a longer three-month period of time to ensure the Contractor is not penalised for a small sample size and to judge the longer term performance trend.

Appendix A to Annex A.2 to Schedule 10 – Service Level Agreement – Metrics

Serial	Grouping	Measure	Metric	Monthly Target
1	Service Availability	Service Availability at given performance levels.	24/365	[REDACTED]
2	System Availability	System Available with full functionality	Full Functionality	[REDACTED]
3	Incident Resolution	Priority Level 1 (P1)	Service restored within 2 hours	[REDACTED]
4	Incident Resolution	Priority Level 2 (P2)	Service restored within 6 hours	[REDACTED]
5	Incident Resolution	Priority Level 3 (P3)	Service restored within 24 hours	[REDACTED]
6	Incident Resolution	Priority Level 4 (P4)	Service restored within 48 hours	[REDACTED]
7	Incident Management	A management owner to be assigned to incidents in line with the agreed procedure	Within 1 hour of incident being raised	[REDACTED]
8	Problem Management	Repeat Problems	Percentage of problems raise din the previous quarter are repeat problems	[REDACTED]
9	Contract Management Meetings	Attendance at monthly meetings	Monthly	[REDACTED]
10	Contract Management Performance Reports	Performance reports issued monthly	Within 10 working days of the end of the month	[REDACTED]

Annex B to Schedule 10 – System Administration Service Level Agreement

1 Introduction

This document details the Service Level Agreement (SLA) for the Contractor provided DESA Sales Management System Administration support service in accordance with Schedule 2 – Statement of Requirement. The Contractor' performance will be measured by the Authority on a monthly basis and used to justify service payments and any remedial action required.

The SLA provides a comprehensive overview of the routine System Administration services provided and explains how the Contractor will support the DESA Sales Management Service, specifically:

- The range and type of services
- Details of the Contractor System Administration team
- Performance levels
- Service Request resolution times
- Service level reporting metrics
- Service capacity levels

Verification of each service request shall be provided by the Authority, to ensure Authorised Users are permitted to hold the levels of access requested and have legitimate business reasons to do so.

2 System Administration Support Services

2.1 Range and Type of Services

A comprehensive range of services is provided that enables the Authorised Users to seek System Administration support to satisfy the primary Authority requirements detailed in Schedule 2 – Statement of Requirement to maintain DESA Sales Management System.

2.1.1 Add, Change or Remove Authorised Users

System Administration support shall provide the following Authorised User access control service:

- Add or Change Authorised Users - The Contractor SPOC will create new Authorised User accounts or an amendment to an existing account, following receipt of a Service Request accompanied by an Authority approval. The Authorised User will be provided with a

DESA Sales Management System account username and temporary password by e-mail from the Service Desk.

- Remove Authorised Users - A monthly Service Request will be raised by the Authority providing a list of all DESA Sales Management System accounts to be removed. A specific Service Request will be made if the immediate removal of an account is needed for the purposes of data protection.

2.1.2 User Account Password and Profile Management

System Administration support will be provided for Authorised User password or profile management, through:

- Service Desk - Service Requests will be submitted to the Service Desk for account password resets and Authorised User profile updates

2.1.3 Define and Set Permission-level Groups for Authorised Users

A Service Request may be made for the creation of specific permission-level Groups within DESA Sales Management System; designated roles can be included in these groups and individuals assigned accordingly. The parameters for such Groups shall be approved by a designated Authority representative prior to the Service desk applying the necessary actions.

2.1.4 Export of Bulk data from DESA Sales Management System

Service Requests for the export of bulk data from DESA Sales Management System will be satisfied by the Service Desk on a case-by-case basis, timescales will depend on the scale and complexity of the export request but will be no longer than 10 working days.

2.1.5 Define, Approve & Set Each Authorised User's Permission, Authority & Access Rights

Closely aligned with the creation of new User accounts and the amendment of existing accounts, the definition and approval of an Authorised User's roles, permissions and access rights are submitted on a DESA Sales Management System User Account Application and approved by a designated Authority representative before submitting a Service Request for action.

3 Performance (C.4.2)

3.1 Service Availability

All System Administration support will be requested through the SPOC, where the Service Desk shall handle all System Administration Service Requests. System Administration support will be available to Authorised Users through provision of the following:

- A dedicated Service Desk contact telephone number (details to be advised during Service Implementation) operational with effect from IOC and available Monday to Friday (excluding public holidays) between the hours of 9:00 am and 5:00 pm. The call will be logged by the Service Desk as a Service Request.
- An Online Support Facility, operational with effect from IOC and accessible from MODNET, through which System Administration Service Requests can be submitted. The online facility shall be available 24 hours a day, 7 days a week. However, any Service Request submitted through the Online Support Facility outside of the normal Service Desk telephone operating hours (Monday to Friday (excluding public holidays) between the hours of 9:00 am and 5:00 pm) will be processed the next working day.

3.2 Service Request Resolution Times

Service Request resolution times are measured from the point that an acceptable Service Request, complete with relevant supporting documents and/or information, is received by the Service Desk to the point of satisfaction of the request where the originator has been informed. Measurement shall not commence if a Service Request is incomplete or out of scope of the System Administration service.

Any measurement period is subject to the bounds of the Service Desk operating hours of Monday to Friday (excluding public holidays) between the hours of 9:00 am and 5:00 pm. The DESA Sales Management System Administration Support Service Request resolution times are detailed in Table 3.

3.3 Performance Reporting

The Contractor is responsible for collating data to measure performance and will report performance against the SLA targets monthly to the Authority, highlighting where and why any Service Requests have been excluded from the performance metrics.

The metrics to be applied to this SLA for each reporting month are:

- [REDACTED] % of Service Requests shall be satisfied within the resolution times detailed in Table 3.

Service Category	Type of Service Request	Resolution Time	Notes
Access Management	Remove Authorised Users.	Up to 48 hours	Monthly bulk return by Authority.

	Add or change Authorised Users.	Up to 24 hours	To be approved by Authority.
	User account password and profile management.		
	Define, approve and set each Authorised User's permission, authority and access rights.		
Request Fulfilment	Define and set permission level Groups for Authorised Users.	Up to 48 hours	Requires Authority approval.
	Conduct archiving activities within DESA SMS.	Up to 48 hours	
	Set-up and maintain User look-up lists.	Up to 48 hours	
	Export bulk data from DESA SMS.	Up to 10 working days	

Table 3: Service Request Resolution Times

3.4 Service Credits

Where the DESA Sales Management System Administration service fails to meet the required level for three consecutive months the Service Credit of [REDACTED] % will be applied to the following month's System Administration service charge.

Occasionally, the cause of service level failures will be outside the control of the Contractor; consequently, the following conditions apply:

- Specific acts or omissions by the Customer or its Authorised Users that cause a service level failure are excluded from the service level performance metrics.
- Where the failure relates to aspects outside the control of the Contractor such as the availability of non-Contractor infrastructure i.e., MODNET, then these will be excluded from the service level performance metrics.
- When the sample size that is used for calculating the service performance is small, any deviation can have a significant impact on performance i.e., two events with one pass and one a fail will lead to performance level of 50%. Therefore, the Contractor propose

that where the number of events is 19 or fewer the performance for service credit purposes will be assumed to be 100%. The performance in this instance can be reviewed over a longer three-month period of time to ensure the Contractor is not penalised for a small sample size and to judge the longer term performance trend.

Schedule 11 - Security Aspects Letter

[REDACTED]

Schedule 12 – End User Licence Agreement



SFDC TERMS OF USE

These SFDC Terms of Use (“**TOU**”) govern Customer’s use of the Services, and are deemed incorporated by reference into the agreement between Customer and Reseller pursuant to which Reseller is reselling the Services to Customer.

1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Content**” means information obtained by SFDC from publicly available sources or third party content providers and made available to Customer through the Services or pursuant to an Order Form, as more fully described in the Documentation.

“**Customer**” means the entity that has contracted with Reseller to purchase subscriptions to use the Services, subject to the conditions of these TOU. Where Reseller is using the Services for its own purposes, Reseller shall be considered Customer.

“**Customer Data**” means any electronic data or information submitted by or for Customer to the Services, excluding Content and Non-SFDC Applications.

“**Documentation**” means the applicable Service’s [Trust and Compliance](#) documentation, and its usage guides and policies, as updated from time to time, accessible via help.salesforce.com or login to the applicable Service.

“**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“**Marketplace**” means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, the AppExchange at <http://www.salesforce.com/appexchange>, or the Heroku add-ons catalog at <https://addons.heroku.com/>, and any successor websites.

“**Non-SFDC Application**” means a Web-based, mobile, offline or other software application functionality that interoperates with a Service, that is provided by Reseller, Customer, or a third party and/or listed on a Marketplace including as Salesforce Labs or under similar designation. Non-SFDC Applications, other than those obtained or provided by Customer, will be identifiable as such.

“**Order Form**” means the ordering document specifying the Services to be provided under the agreement between Customer and Reseller (which incorporates these TOU by reference), including any addenda, supplements, or additional product specific terms for the Services as required by SFDC.

“**Reseller**” means the entity that has contracted directly with SFDC to resell Services to its Customers and the entity that has contracted directly with Customer for the sale of a subscription to Services.

“**SFDC**” means [salesforce.com](https://www.salesforce.com), inc., a Delaware corporation with its principal place of business at Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California 94105

“**Services**” means the products and services that are ordered by Customer under an Order Form and made available online by SFDC including associated offline or mobile components, as described in the Documentation. “Services” exclude Content and Non-SFDC Applications.

“**User**” means an individual who is authorized by Customer to use a Service for the benefit of Customer, for whom Customer has purchased a subscription, and to whom Customer (or, when applicable, SFDC at Reseller’s request), has supplied a user identification and password. Users may include, for example, Customer’s employees, consultants, contractors and agents, and third parties with which Customer transacts business.

2. USE OF SERVICES AND CONTENT

2.1. Subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by SFDC regarding future functionality or features.

2.2. Usage Limits. Services and Content are subject to usage limits specified in Order Forms or the Documentation.

2.3. Customer Responsibilities Customer will (a) be responsible for Users’ compliance with the TOU, Order Forms and the Documentation, (b) be responsible for the accuracy, quality, and legality of Customer Data, the means by which Customer acquired Customer Data, Customer’s use of Customer Data with the Services, and the interoperation of any Non-SFDC Applications with which Customer uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify SFDC or Reseller promptly of any such unauthorized access or use, and (d) use the Services only in accordance with these TOU, the Documentation, the Acceptable Use and External Facing Services Policy at <https://www.salesforce.com/company/legal/agreements.jsp>, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-SFDC Applications with which Customer uses Services or Content.. Any use of the Services in breach of the foregoing by Customer or Users that in SFDC’s judgment threatens the security, integrity or availability of SFDC’s services, may result in SFDC’s immediate suspension of the Services, however SFDC will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

2.4. Usage Restrictions. Customer will not (a) make the Services or Content available to anyone other than Customer or Users, or use Services or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease the Services or Content, or include Services or Content in a service bureau or outsourcing offering,

(c) use the Services or Non-SFDC Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services or Non-SFDC Applications to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (f) attempt to gain unauthorized access to the Services or Content or their related systems or networks, (g) permit direct or indirect access to or use of Services or Content in a way that circumvents a contractual usage limit, or use the Services to access or use any of SFDC's intellectual property except as permitted under these TOU, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, and (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile Services or Content, or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

2.5. Removal of Content and Non-SFDC Applications. If Customer receives notice that Content or a Non-SFDC Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or the Acceptable Use and External Facing Services Policy, Customer will promptly do so. If Customer does not take required action in accordance with the above or if in SFDC's judgment continued violation is likely to reoccur, SFDC may disable the applicable Content, Service and/or Non-SFDC Application until the potential violation is resolved. If requested by SFDC, Customer shall confirm such deletion and discontinuance of use in writing and SFDC shall be authorized to provide a copy of such confirmation to any such third party claimant or governmental authority, as applicable. In addition, if SFDC is required by any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, SFDC may discontinue Customer's access to Content through the Services.

3. NON-SFDC PRODUCTS AND SERVICES

3.1. Non-SFDC Products and Services. SFDC or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-SFDC Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-SFDC provider, product or service is solely between Customer and the applicable Non-SFDC provider. SFDC does not warrant or support Non-SFDC Applications or other non-SFDC products or services, whether or not designated by SFDC as "certified" or otherwise, unless expressly provided otherwise in an Order Form. SFDC is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-SFDC Application or its provider.

3.2. Integration with Non-SFDC Applications. The Services may contain features designed to interoperate with Non-SFDC Applications. SFDC cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-SFDC Application ceases to make the Non-SFDC Application available for interoperation with the corresponding Service features in a manner acceptable to SFDC.

4. PROPRIETARY RIGHTS AND LICENSES

4.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, SFDC, its Affiliates, its licensors and Content providers reserve all rights, title and interest in and to the Services and Content, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

4.2. Access to and use of Content. Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms, these TOU and the Documentation.

4.3. License by Customer to SFDC. Customer grants SFDC, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit and display any Non-SFDC Applications and program code created by or for Customer using the Services or for use by Customer with the Services, and Customer Data, each as necessary for SFDC to provide and ensure proper operation of, the Services and associated systems in accordance with these TOU and the Documentation. If Customer chooses to use a Non-SFDC Application with a Service, Customer grants SFDC permission to allow the Non-SFDC Application and its provider to access Customer Data as required for the interoperation of that Non-SFDC Application with the Service. Subject to the limited licenses granted herein, SFDC acquires no right, title or interest from Customer or its licensors under these TOU in or to any Customer Data, Non-SFDC Application or such program code.

4.4. License to Use Feedback. Customer grants to SFDC and its Affiliates a worldwide, perpetual, irrevocable, royalty-free, license to use and incorporate into its services any suggestions, enhancement, requests, recommendations, correction, or other feedback provided by Customer or its Users, relating to the operation of SFDC's or its Affiliates' services.

4.5. Federal Government End Use Provisions. SFDC provides the Services, including related software and technology, for ultimate federal government end use in accordance with the following: The Services consist of "commercial items," as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this TOU, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this TOU specifically granting those rights.

5. TERM AND TERMINATION

5.1. Termination of the Services. Customer's use of the Services may be immediately terminated and/or suspended, at SFDC's option, upon notice due to: (a) a breach of the terms of these TOU, the Documentation or Order Forms by Customer or any User; or (b) a breach by Reseller of its payment obligations to SFDC with respect to the subscriptions it is reselling to Customer in connection with these TOU.

5.2. Termination of Reseller's Agreement with SFDC. Following any termination or expiration of Reseller's agreement with SFDC authorizing Reseller to resell the Services, each Customer subscription to the Services outstanding at the time of such termination or expiration ("**Legacy Order**") shall remain in effect until the end of its subscription term, and shall continue to be governed by these TOU, provided that Customer is not in breach of these TOU and SFDC has received all payments due in connection with such Legacy Orders. Except as provided herein, following a termination or expiration of Reseller's agreement with SFDC, SFDC is under no obligation to provide the Services directly to Customer, or to assume a direct contractual relationship with Customer.

5.3. Shared Orgs. Customer acknowledges that if the Services are provisioned in an Org in which SFDC services purchased from SFDC or another third party are also provisioned, access to such Org may be suspended or terminated due to breach of the agreement governing such other SFDC services, and that in no case will any such termination or suspension give rise to any liability to Customer for a refund or other compensation.

5.4. No Refunds upon Termination. In no case will any termination, expiration, or suspension of the Services, these TOU, or Reseller's agreement with SFDC give rise to any liability of SFDC to Customer for refunds or damages.

6. WARRANTY DISCLAIMER

AS BETWEEN SFDC AND CUSTOMER, SFDC MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT IS PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

7. INDEMNIFICATION

Customer will defend SFDC against any claim, demand, suit or proceeding made or brought against SFDC by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, or arising from Customer's use of the Services or Content in breach of these TOU, the Documentation, an Order Form, or applicable law (each a "**Claim Against SFDC**"), and will indemnify SFDC for any damages, attorney fees and costs finally awarded against SFDC as a result of, or for any amounts paid by SFDC under a settlement approved by SFDC in writing of, a Claim Against SFDC; provided that SFDC: (i) promptly gives Customer written notice of the Claim Against SFDC, (ii) gives Customer sole control of the defense and settlement of the Claim Against SFDC (provided that Customer may not settle or defend any Claim Against SFDC unless it unconditionally releases SFDC of all liability), and (iii) provides to Customer all reasonable assistance, at Customer's expense.

8. NO LIABILITY

IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO CUSTOMER OR ANY USER FOR ANY DAMAGES RELATED TO CUSTOMER'S PURCHASE OR USE OF THE SERVICES PURSUANT TO THESE TERMS OF USE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. GENERAL

9.1. Notice. Any notices that SFDC is required to provide to customers under the Documentation shall be provided by SFDC to the Reseller or Customer as determined by SFDC in its sole discretion based on the circumstances and designated contact information for notices available to SFDC in the Services.

9.2. Waiver. No failure or delay by SFDC in exercising any right under these TOU will constitute a waiver of that right.

9.3. Severability. If any provision of these TOU is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of these TOU will remain in effect.

9.4. Further Contact. SFDC may contact Customer regarding new SFDC service features and offerings.

9.5. Third Party Beneficiary. These TOU are between Customer and Reseller; SFDC is not a party to these TOU, however SFDC is a third party beneficiary to the agreement between Customer and Reseller solely as it relates to these TOU.

9.6. Order of Precedence. With respect to the subject matter discussed herein, in the event of any conflict or inconsistency between these TOU and any other terms or conditions in Customer's agreement or order form with Reseller, these TOU shall prevail.

9.7 Titles and Headings. Titles and headings of sections of this TOU are for convenience only and shall not affect the construction of any provision of this TOU.