



# Ministry of Defence

## Army HQ BFG Team

**Contract No: CB/BFG/0153**

**For:**

**External Functional Skills Teacher and  
Cultural Awareness Provision for Infantry  
Training Centre (ITC) Catterick**

**Between the Secretary of State for  
Defence of the United Kingdom of Great  
Britain and Northern Ireland**

**Team Name and address:**

**Army Commercial, Bldg 5  
Catterick Barracks, Detmolder Str. 440  
33605 Bielefeld – Germany**

**E-mail: [REDACTED]  
Telephone Number: [REDACTED]**

**And**

**Contractor Name and address:**

**Darlington College  
Central Park  
Haughton Road  
Darlington,  
County Durham, DL1 1DR**

**E-mail Address: [REDACTED]  
Telephone Number [REDACTED]**

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## **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.
- d. 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 pursuant to the Contract agree 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."
    - (2) 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,

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 - 44 (and 45 - (a)ii(ii).60, 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 10 (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.

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.

apply.

### 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

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, including any Sub-contractors. 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  
Poplar 1 # 2119  
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

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**

a. The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition 14 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years from:

- (1) the end of the Contract term;
- (2) termination of the Contract; or
- (3) the final payment

whichever occurs latest.

#### **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**



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

(1) in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), or if no such requirement is specified, with the MOD stock reference number, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements);

(2) where the Contractor Deliverable has a limited shelf life, the marking shall include: the expiry date / date of manufacture, expressed as specified in Schedule 3 (Contract Data Sheet), or in the absence of such requirement they shall be marked as month (letters) and year (last two figures); and

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

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

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



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-PKq@mod.uk](mailto:DESSEOCSCP-SptEng-PKq@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:

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 (SC2) 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:

- (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 of the Contractor Deliverables.

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.

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:
  - (3) Hard copies to be sent to:  
Hazardous Stores Information System (HSIS)  
Defence Safety Authority (DSA)  
Movement Transport Safety Regulator (MTSR)  
Hazel Building Level 1, #H019  
MOD Abbey Wood (North)  
Bristol, BS34 8QW
  - (4) Emails to be sent to:  
[DSA-DLSR-MovTpt-DGHSIS@mod.uk](mailto:DSA-DLSR-MovTpt-DGHSIS@mod.uk)
- i. Failure by the Contractor to comply with the

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 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:
  - (1) verify the forest source of the timber or

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 data sheet (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 data sheets (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Representative (Commercial).

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

## 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;

(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

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 10 (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

### 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-



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

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 material 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 [X] 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 20 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.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 to have been known by the Contractor at



termination under Clause 33.t 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

by the Authority of anything required to be done or delivered under the Contract;

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

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

Clause 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

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

(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

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. 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.

b. 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.

c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

d. Where the Authority fails to comply with clause 36a 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.

e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.

f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

#### **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

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

the Authority exercises its right of recovery under clause 0;

(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

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.

Where the Contractor is a company registered in England:

(9) 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

(10) the court making an administration order in relation to the company; or

(11) 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

(12) the company passing a resolution that the company shall be wound-up; or

(13) the court making an order that the company shall be wound-up; or

(14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in



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 Prevention of Corruption Acts 1889 - 1916 or under sub sections 108 -109 of the Anti-Terrorism, Crime and Security Act 2001 before those Acts or sub sections are revoked, or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, 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

#### **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:

- (a) all such unused and undamaged materiel; and
- (b) 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

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.

### **Additional Conditions**

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

DEFCON 76 (SC2) (Edn 11/17) Contractor's Personnel at Government Establishments.

DEFCON 90 (Edn 11/06) Copyright

DEFCON 532B (SC2) (Edn 11/17) Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)

DEFCON 658 (SC2) (Edn 11./17) Cyber

DEFCON 703 (Edn 08/13) Intellectual Property Rights – Vesting in the Authority

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

#### **47. Payment Methodology - Education and Skills Funding Agency**

a. The predicted annual requirement shall be notified to the Contractor annually in April, in writing by the Contract Designated Officer. Funding from the ESFA shall be used to address the learning needs of the individuals identified.

b. Payments shall be in accordance with all the Terms and Conditions laid down by the ESFA. The Authority has no active role in the payment process for all ESFA elements of the Contract

#### **48. Payment Methodology – Cultural Awareness Training.**

a. Payment for the Cultural Awareness element of the contract shall be in accordance with Clause 36 and in Schedule 2 – Schedule of Requirements.

#### **49. Contractor's Personnel**

a. Where specific personnel have been proposed by the Contractor for the performance of the Contract, the Contractor shall take all reasonable steps to avoid changes to such personnel and any changes which are unavoidable shall be brought to the immediate attention of the Authority which reserves the right, acting reasonably, to reject such alternative personnel as the Contractor may then propose. The agreement by the Authority, whether notified or otherwise, to any personnel proposed in any originating tender or subsequent proposal shall not prejudice the requirement upon the Contractor to perform the Contract.

b. If in the opinion of the Authority, acting reasonably, any of the Contractor's employees associated with the performance of the Contract shall misconduct themselves or be incapable of efficiently performing his duties or it shall not be in the public or National interest for any such person to be employed or engaged by the Contractor in the performance of the Contract then the Contractor shall remove such person without delay on being required to do so by the Authority (Designated Officer) and, subject to Clauses 49a, shall cause the work to be performed by such other person or persons as may be necessary in default

#### **50. Indemnity**

a. Without prejudice to the provisions of DEFCON 76 where these form part of the Contract, the Contractor shall be responsible for and keep the Authority against all damages, losses, costs, expenses, actions, demands, proceedings, claims and liability made against or suffered or incurred by the Authority in respect of personal injury, illness or disease (including personal injury, illness or disease resulting in death) arising directly or indirectly out of the performance of or in connection with the Contract, provided that this indemnity shall not apply to the extent of that the Contractor is able to show that such injury, illness or disease was caused or contributed to by the wilful default of the Authority or any Government service.

b. The Authority shall be at liberty to settle any claim against the Authority or any servant of the Crown coming within the scope of the indemnities given by the Contractor in clauses 50a, by payment as matter of grace of any sum by way of compensation and the said indemnities shall cover any payment so made.

c. The indemnities contained in the Clause shall extend to all claims which are not legally enforceable against the Crown or the Authority but would be so enforceable if the Crown were not a private person or if the Authority or the servant or agent were not a representative of or in the employment of the Crown to all sums properly payable by



connection with any injury or loss arising in connection with the Contract, being sums which are payable under any statute, warrant, order, scheme, regulation or condition of service, for the benefit of the servant or his family or dependants, whether or not these are enforceable against the Crown

#### **51. Data Protection**

a. The Contractor must not disclose, or allow access to, any Personal Data provided by the Authority, or acquired by the Contractor during the course of executing its obligations under the Contract, to any employee of the Contractor or to a sub-contractor save where the information is necessary to enable the Contractor to fully perform his obligations under this Contract.

b. Any disclosure or access to Personal Data allowed as specified above must be made in confidence and must extend only so far as it is necessary for the purposes of the Contract.

c. On termination of the Contract and following consultation with the Designated Officer, all personal information provided by the Authority or acquired by the Contractor held by the Contractor must either be destroyed (where the Authority will require proof of destruction immediately on completion of the activity) or returned to the Authority within one month of the completion date of the Contract.

d. The Contractor shall ensure that all Personal Data is protected in accordance with DEFCON 532B.

e. The Contractor shall ensure that any e-mail transmissions containing Personal Data are protected.

f. The Contractor shall report at the earliest opportunity all security breaches and actual or suspected losses of data to the Designated Officer. Such losses are subject to investigation by the relevant Authority organisation depending on the location and the circumstances

#### **52. Data Management**

a. The Contractor is required to record and monitor learning information, and learner progress. Specific databases are not prescribed. The Contractor shall supply to the Units and to the Contract Designated Officer.

b. The Contractor shall use a learner tracking system to monitor Learner progress. The Contractor shall provide free and unrestricted access to the data and shall provide reports to the Authority as requested.

c. The Contract Designated Officer, acting reasonably, reserves the right to raise the issue with the Authority Commercial section who will contact ESFA with regard to continued payment to the Contractor where data quality gives rise to concern about the accuracy of the data provided and where these concerns are not adequately addressed by the Contractor

#### **53. Equality and Diversity**

a. The Authority and its agencies are committed to, and operate a policy of equality and diversity for its entire staff and recruits.

b. The Authority aim to promote equality and diversity, tackle discrimination and narrow the achievement gap. The Contractor shall cooperate with the Authority and reinforce the achievement of these aims.

c. The Contractor is expected to have a defined equality and diversity policy and procedures.

#### **54. Monitoring and Compliance**

a. For the purposes of ensuring compliance with this

b. The Designated Officer may inspect or arrange for the inspection of the delivery of the Functional Skills programme or any part thereof during the period of the Contract at any reasonable time. When the Authority wishes to exercise its rights of inspection under this Clause the Contractor shall give to the Designated Officer and any other person nominated by the Learning Development Wing ITC full and free access to the Functional Skills programme

#### **55. Security**

a. The Contractor shall be required to ensure that any staff provisioned to deliver any part of the Services shall submit themselves to the Authority's security clearance procedures as required by the Designated Officer

b. The Contractor shall comply with any reasonable security measures requested by the Authority and shall comply with extant security procedures prevalent in the establishments.

#### **56. Student Demand**

a. The Authority accepts no liability for, nor offers any guarantee to the Contractor in respect of, estimated Student numbers for Functional Skills. Any such estimates conveyed to the Contractor by the Authority are to be accepted by Contractor as estimates only and shall not be legally binding or form any part of this Contract. The Authority accepts no liability, financial or otherwise, for any loss suffered by the Contractor resulted from projected student shortfalls.

#### **57. Facilities/Equipment**

a. Any offices, classrooms and other necessary facilities made available to the Contractor by the Authority in connection with this Contract shall be provided free of charge and used by the Contractor solely for the purpose of performing its obligation under the Contract. The Authority shall have free and unrestricted access to offices used by the Contractor under this Contract.

b. The Contractor shall have use of such offices as a licensee and shall vacate the same upon natural completion of the Contract or upon earlier termination of the Contract.

c. The Designated Officer reserves the right to withdraw or amend the facilities provided, subject to prior discussion with the Contractor. In such instances the Authority will endeavour to provide alternative facilities of the same standard. The Authority offers no guarantee that facilities shall be available for the duration of the Contract.

d. The Contractor shall normally be expected to be responsible for providing IT equipment and telephony equipment and for the maintenance and safety of this equipment. In this location, IT equipment can be provided if required (see Clause 58e). Any software provided by the Contractor in relation to delivering the Contract shall be maintained by the Contractor. Any breach of software licences shall be at the Contractor's risk. The Contractor shall indemnify the Authority against any claims made by a third party in relation to any breach of software licences related to the performance of this Contract.

e. If the Contractor wishes to connect any IT equipment, whether issued to the Contractor by the Authority or purchased by the Contractor either stand-alone or connected to any Authority network, the Contractor must comply with the local Security Operating Procedures (SyOps).

f. The Contractor shall not install any unauthorised software onto any IT equipment that is or may be connected to any Authority network. Should the Contractor wish to install software onto these machines, they shall seek formal authorisation to do so from the local IT Security Officer.

equipment in that location whether connected to an Authority network or any other network. This policy shall apply to IT equipment owned by the Authority, the Contractor or their employees.

#### **58. Safeguarding Learners**

- a. The Contractor shall co-operate with and provide information to the ITC as requested, to give assurance that adequate arrangements exist for Learner Health and Safety.
- b. The Contractor shall comply fully with all Authority and other statutory requirements for the safeguarding of learners including child protection and protection of vulnerable adults.
- c. The Contractor shall ensure that all staff that have unsupervised direct contact with Learners have undergone enhanced DBS checks and meet the requirements of the Government's Vetting and Barring Scheme.

#### **59. Transfer of Undertakings for the Protection of Employment.**

- a. The full requirements of this Clause are contained in the Transfer Regulation at Annex A to this document.

#### **60. The processes that apply to this Contract are:**

- a. Cyber Risk RAR-2YDJ797E has been undertaken and has been rated as Low.
- b. Contractor shall complete the Supplier Assurance Questionnaire (SAQ) via the Cyber Protection Service (Octavian) to demonstrate their compliance with the required cyber risk level. This is a self assurance process and no validation of the SAQ is required. You can find further information on the SAQ by searching the DCPD on GOV.UK
- c. If you intend to sub-contract any part of the contract, you must complete a Risk Assessment to assess the cyber risk level of that sub-contract. All potential sub-contractors must complete a SAQ and ensure that they have the necessary security controls in place before the sub-contract is awarded. It is the Contractor's responsibility to manage the process.

## TRANSFER REGULATIONS

## PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

## 1 DEFINITIONS

1.1 In this Annex A Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Annex A Part 1 unless the context otherwise requires:

**"Data Protection Legislation"** means: (i) any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (ii) from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the **"General Data Protection Regulation"**); (iii) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the processing of Personal Data; and (iv) any guidance or statutory codes of practice issued by the Information Commissioner or the European Data Protection set up under the General Data Protection Regulation in relation to such legislation;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority Employee, a Previous Contractor Employee or an Unexpected Employee;

**"New Provider"** means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

**"Previous Contractor"** means Darlington College;

**"Previous Contractor Employee"** means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

**"Relevant Transfer"** means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

**"Relevant Transfer Date"** means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

**"Relevant Statutory Scheme"** has the same meaning as in Regulation 8 of the Transfer Regulations;

**"Services"** shall have the meaning specified in [project team to complete];

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

## 2 PREVIOUS CONTRACTOR EMPLOYEES

## 2.1 Employee Information

2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Annex A Part 1 in respect of Previous Contractor

Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

## **2.2 Obligations in respect of Previous Contractor Employees**

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

## **2.3 Indemnities**

- 2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:
  - (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
  - (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions "repudiatory breach", "substantial change" and "material detriment" shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and

- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
- (d) Any variations or proposed variations to any Previous Contractor Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

### **3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL**

#### **3.1 Contractor Indemnity**

- 3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

#### **3.2 Post Transfer Reporting**

- 3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:
  - (a) any proposed, agreed or imposed changes to terms and conditions of service;
  - (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
  - (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
  - (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
  - (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT**

**PART A**

1. Pursuant to paragraph 2.1.1 of this Annex A Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

**1.1 Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

**1.2 Performance Appraisal**

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

**1.3 Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;



- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

#### **1.4 Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

#### **1.5 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

#### **1.6 Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

## **Part B**

### **1.6 Information to be provided 28 days prior to the Relevant Transfer Date:**

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

## **PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT**

### **1. DEFINITIONS**

1.1 In this Annex A Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Annex A Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Annex A Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Annex A Part 1, in this Annex A Part 2 unless the context otherwise requires:

**"Employee Liability Information"** has the same meaning as in Regulation 11(2) of the Transfer Regulations;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

**"Subsequent Relevant Transfer"** means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

**"Subsequent Transfer Date"** means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

**"Subsequent Transferring Employee"** means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate .

### **2. EMPLOYMENT**

#### **2.1 Information on Re-tender, Partial Termination, Termination or Expiry**

2.1.1 No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to Annex A Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;
- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;

- (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.

2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Annex A (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
- (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
- (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Annex A (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.

2.1.4 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

2.1.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof)

under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.5 of this Annex A Part 2.

- 2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Annex A Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

## 2.2 Obligations in Respect of Subsequent Transferring Employees

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 2.3 Unexpected Subsequent Transferring Employees

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:

- (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
- (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
- (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
  - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person;
  - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
  - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

## 2.4 **Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;



- (b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

- 2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

## **2.5 Contracts (Rights of Third Parties) Act 1999**

- 2.5.1 Pursuant to the terms of DEFCON 537, a New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999..
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.6 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

## **2.6 General**

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Annex A where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Annex A, the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
  - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
  - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
  
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership;
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
  
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
  
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

## PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

### Part A

1. Pursuant to paragraph 2.1.2 of this Annex A, part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

#### 1.1 Personal, Employment and Career

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

#### 1.2 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

#### 1.3 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;

- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

#### **1.4 Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

#### **1.5 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

#### **1.6 Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

### **Part B**

#### **1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:**

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

## Schedule 1 - Definitions of Contract

<b>Articles</b>	means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. <b>(This definition only applies when DEFCONs are added to these Conditions);</b>
<b>Authority</b>	means the Secretary of State for Defence acting on behalf of the Crown;
<b>Authority's Representative(s)</b>	shall be those person(s) defined in Schedule 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;
<b>Business Day</b>	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
<b>Central Government Body</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"><li>a. Government Department;</li><li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>c. Non-Ministerial Department; or</li><li>d. Executive Agency;</li></ul>
<b>Collect</b>	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;
<b>Commercial Packaging</b>	means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)
<b>Conditions</b>	means the terms and conditions set out in this document;
<b>Consignee</b>	means that part of the Authority identified in Schedule 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;
<b>Consignor</b>	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
<b>Contract</b>	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Amendments to Contract);
<b>Contract Price</b>	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.
<b>Contractor</b>	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
<b>Contractor Commercially Sensitive Information</b>	means the Information listed in the completed Schedule 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;

<b>Contractor Deliverables</b>	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;
<b>Control</b>	means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person: <ul style="list-style-type: none"> <li>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</li> <li>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</li> </ul> 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;
<b>CPET</b>	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>Dangerous Goods</b>	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: <ul style="list-style-type: none"> <li>a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);</li> <li>b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);</li> <li>c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);</li> <li>d. International Maritime Dangerous Goods (IMDG) Code;</li> <li>e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;</li> <li>f. International Air Transport Association (IATA) Dangerous Goods Regulations.</li> </ul>
<b>DBS Finance</b>	means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at <a href="https://www.aof.mod.uk">https://www.aof.mod.uk</a> ;
<b>DEF STAN</b>	means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;
<b>Deliver</b>	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;
<b>Delivery Date</b>	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;
<b>Denomination of Quantity (D of Q)</b>	means the quantity or measure by which an item of material is managed;
<b>Design Right(s)</b>	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
<b>Diversion Order</b>	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
<b>Effective Date of Contract</b>	means the date specified on the Authority's acceptance letter;
<b>Evidence</b>	means either: <ul style="list-style-type: none"> <li>a. an invoice or delivery note from the timber supplier or Subcontractor to the</li> </ul>



Contractor specifying that the product supplied to the Authority is FSC or PEFC certified;  
or  
b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;

<b>Firm Price</b>	means a price (excluding VAT) which is not subject to variation;
<b>FLEGT</b>	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
<b>Government Furnished Assets (GFA)</b>	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;
<b>Hazardous Contractor Deliverable</b>	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
<b>Independent Verification</b>	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";
<b>Information</b>	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
<b>Issued Property</b>	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;
<b>Legal and Sustainable</b>	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;
<b>Legislation</b>	means in relation to the United Kingdom 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;
<b>Military Level Packaging (MLP)</b>	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;
<b>Military Packager Approval Scheme (MPAS)</b>	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);
<b>Military Packaging Level (MPL)</b>	shall have the meaning described in Def Stan 81-041 (Part 1);
<b>MPAS Registered Organisation</b>	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging designer trained and certified to MPAS requirements;

<b>NATO</b>	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
<b>Notices</b>	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Overseas</b>	shall mean non UK or foreign;
<b>Packaging</b>	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
<b>Packaging Design Authority (PDA)</b>	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Primary Packaging Quantity (PPQ)</b>	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
<b>Recycled Timber</b>	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by-products;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> it excludes sawmill co-products;
<b>Safety Data Sheet</b>	has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);
<b>Schedule of Requirements</b>	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;
<b>Short-Rotation Coppice</b>	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;
<b>Specification</b>	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);
<b>STANAG 4329</b>	means the publication NATO Standard Bar Code Symbolologies which can be sourced at <a href="https://www.dstan.mod.uk/fags.html">https://www.dstan.mod.uk/fags.html</a> ;
<b>Subcontractor</b>	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;
<b>Timber and Wood-Derived Products</b>	means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;
<b>Transparency Information</b>	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;

**Virgin Timber**

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

## Annex A to Schedule 1 – Additional Definitions of Contract law. Conditions 45 - 60 (Additional Conditions)

Schedule 2 - Schedule of Requirements for Contract No: CB/BFG/0153

**Contractor Deliverables**

Payment to be made at the end of each delivery period.

	Price (£) Ex VAT		
Cultural Awareness Training	Year 1	Year 2	Year 3
Wing A	██████	██████	██████
Wing B	██████	██████	██████
Wing C	██████	██████	██████
Total Price	██████	██████	██████

### Schedule 3 – Contract Data Sheet

#### General Conditions

##### Condition 2 – Duration of Contract:

The Contract start date shall be 01 Dec 2018  
The Contract expiry date shall be: 31 August 2021

##### Condition 4 – Governing Law:

Contract to be governed and construed in accordance with:

English Law ☒

Scots Law ☐ clause 4.d shall apply (one must be chosen)

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:

##### Condition 8 – Authority's Representatives:

The Authority's Representatives for the Contract are as follows:

Commercial: (as per DEFFORM 111)

Project Manager: (as per DEFFORM 111)

##### Condition 19 – Notices:

Notices served under the Contract shall be sent to the following address:

Commercial: (as per DEFFORM 111)

Contractor:

Notices can be sent by electronic mail? ☒ (tick as appropriate)

##### Condition 20.a – Progress Meetings:

The Contractor shall be required to attend the progress meetings as required with the Designated Officer or their representative.

##### Condition 20.b – Progress Reports:

Deliverable reports are as at Schedule 10



**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:**

N/A

**Condition 24 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances: N/A****Condition 25 – Timber and Wood-Derived Products: N/A**

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)

**Condition 28.b – Delivery by the Contractor: N/A**

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: N/A**

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 28.c.(4)):

Line Items:          Address:

Line Items:          Address:

Consignee details (in accordance with condition 23):

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:

**Condition 32 – Self-to-Self Delivery: N/A**

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

**Pricing and Payment****Condition 35 – Contract Price:**

All Schedule 2 line items shall be FIRM Price

**Termination****Condition 42 – Termination for Convenience:**

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

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

See Annex A to Schedule 3 (DEFFORM 111)

**1. Commercial Officer**

Name: SO3 BFG Procurement 2

Address: Army (BFG) Commercial, Building 5, Catterick Kaserne,  
Detmolder Strasse 440, 33605 Bielefeld, Germany  
Email: [REDACTED]

☎ [REDACTED]

**2. Project Manager, Equipment Support Manager or PT Leader**

(from whom technical information is available)

Name: OC Learning Development Wing

Address: Support Battalion, Infantry Training Centre, Vimy Barracks,  
Catterick Garrison DL9 3PS  
Email: [REDACTED]

☎ [REDACTED]

**3. Packaging Design Authority**

Organisation & point of contact:

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

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

Branch/Name:

Tel No:

(b) U.I.N. A0908A

**5. Drawings/Specifications are available from**

**6. INTENTIONALLY BLANK**

**7. Quality Assurance Representative:**

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

AQAPS and DEF STANs are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

**8. Public Accounting Authority**

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

☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5394

**9. Consignment Instructions**

The items are to be consigned as follows:

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:

**A. DSCOM.** DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

**B. JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3) JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)

**11. The Invoice Paying Authority**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

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

Liverpool, L2 3YL

**Website is:**

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

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

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncott

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

**Applications via fax or email:** [DESLCSLS-OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk)

**\*NOTE**

1. Many DEFCONs and DEFORMs 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.

**Schedule 4 - Contract Change Control Procedure (i.a.w. clause 6.b) for Contract No: CB/BFG/0153**

**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 Commercially Sensitive Information Form (i.a.w. condition 13) for Contract No: CB/BFG/0153**

Contract No: CB/BFG/0153

Description of Contractor's Commercially Sensitive Information:

[REDACTED]

Cross Reference(s) to location of sensitive information:

[REDACTED]

Explanation of Sensitivity:

[REDACTED]

Details of potential harm resulting from disclosure:

[REDACTED]

Period of Confidence (if applicable):

[REDACTED]

Contact Details for Transparency / Freedom of Information matters:

Name: [REDACTED]

Position: [REDACTED]

Address: Darlington College, Central Park, Haughton Road, Darlington, Co Durham DL1 1DR

Telephone Number: [REDACTED]

Email Address: [REDACTED]

**Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements for Contract No: CB/BFG/0153**

Contract No:

Contract Title:

**NOT APPLICABLE**

Contractor:

Date of Contract:

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

\* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty: ) attached in accordance with condition 24. ☐

Contractor's Signature:

Name:

Job Title:

Date:

\* check box (☒) as appropriate

---

To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

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



This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

<b>Data Controller</b>	<p>The Data Controller is the Secretary of State for Defence (the Authority).</p> <p>The Personal Data will be provided by: OC Learning Development Wing, Support Battalion, Infantry Training Centre, Vimy Barracks, Catterick Garrison, DL9 3PS</p> <p>Tel [REDACTED]</p>
<b>Data Processor</b>	<p>The Data Processor is the Contractor.</p> <p>The Personal Data will be processed at:</p> <p><i>As above.</i></p>
<b>Data Subjects</b>	<p>The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects:</p> <p>Standard and Gurkha Entry Recruits who are undergoing infantry training at ITC Catterick.</p>
<b>Categories of Data</b>	<p>The Personal Data to be processed under the Contract concern the following categories of data:</p> <p>Names, Dates of Birth, Gender, Unique Learner Number (ULN), academic qualifications. <i>[please specify]</i></p>
<b>Special Categories of data (if appropriate)</b>	<p>The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>[please specify]</i></p>
<b>Subject matter of the processing</b>	<p>The processing activities to be performed under the contract are as follows: <i>[please specify]</i></p> <p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i></p>
<b>Nature and the purposes of the Processing</b>	<p>The Personal Data to be processed under the Contract will be processed as follows: <i>[please specify]</i></p> <p><i>[The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether by automated means or not) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
<b>Technical and organisational measures</b>	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract:</p> <p>Robust methods for the security of data are in place.</p> <p>Clear processes are in place with regards to who can handle data, and how the data is to be handled.</p> <p>There are clear procedures in place if a security breach occurs.</p>

<b>Instructions for disposal of Personal Data</b>	<p>The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): <i>[please specify]</i></p> <p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>
<b>Date from which Personal Data is to be processed</b>	<p>Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: <i>[please specify]</i></p>

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

## 1. BACKGROUND TO THE CONTRACTING AUTHORITY

1.1 The Infantry Training Centre (ITC) is based in Catterick Garrison, North Yorkshire. It exists to train new recruits joining the British Army.

1.2 The Learning Development Wing (LDW) is a department within Support Battalion at the ITC. The ITC sits within the School of Infantry (SCHINF) which is part of the Initial Training Group (ITG). It comes under the authority of the Army Recruiting and Training Division (ARTD). The LDW provides educational support across the ITC, including English Functional Skills (FS) training for Gurkha recruits, FS for all infantry recruits, instructor development for training deliverers and coaching and mentoring.

1.3 The ITC is located at:

Vimy Barracks  
Catterick Garrison  
North Yorkshire  
DL9 3PS

## 2. OVERVIEW OF REQUIREMENT

2.1 Develop Gurkha recruits in FS English education up to a minimum of Entry Level (EL) 3 Reading and Writing and Level (L) 1 Speaking and Listening.

2.2 Develop awareness of UK culture and society for Gurkha recruits.

2.3 Develop Infantry recruits' FS Maths and English education up to and including EL3 for those recruits who are Initially Assessed (IA) by the Army at EL2 and/or cannot provide their qualifications at EL3.

## 3. TERMINOLOGY

3.1 Within the Statement of Requirement (SOR) the following terms are used as follows:

3.1.1 **Authority.** See Schedule 1 Definitions of Contract.

3.1.2 **Provider.** Refers to the organisation which will be selected to deliver against the SOR.

3.1.3 **Learner.** Refers to the individual recruit requiring FS support and/or cultural awareness development and is used interchangeably with the term 'recruit' as appropriate.

## 4. ABBREVIATIONS

4.1 The abbreviations used within the Statement of Requirement (SOR) are as below:

ARTD	Army Recruiting and Training Division
CIC	Combat Infantryman's Course
CoT	Care of Trainees
CPD	Continuing Professional Development
DAss	Diagnostically Assessed
DBS	Disclosure and Barring Service
EL	Entry Level
ESFA	Education and Skills Funding Agency
ESOL	English for Speakers of Other Languages
FS	Functional Skills
FSDM	Functional Skills Development Manager
IA	Initial Assessment

ID	Identification
ILP	Individual Learning Plan
ITC	Infantry Training Centre
ITG	Initial Training Group
JCQ	Joint Council for Qualifications
JE	Junior Entry
KPI	Key Performance Indicator
LDW	Learning Development Wing
L	Level
MOD	Ministry of Defence
OC	Officer Commanding
PGCE	Post Graduate Certificate in Education
PGCert Ed	Post Graduate Certificate in Education
POC	Point of Contact
QA	Quality Assurance
REP	Recruit English Package
SCHINF	School of Infantry
SE	Standard Entry
SEN	Special Educational Need
SLA	Service Level Agreement
SME	Subject Matter Expert
SOR	Statement of Requirement
TEFL	Teaching English as a Foreign Language
UK	United Kingdom
NVQ	National Vocational Qualification

**FUNCTIONAL SKILLS ENGLISH LANGUAGE TEACHER PROVISION AND CULTURAL AWARENESS  
GURKHA RECRUITS**

1. The Provider is required to supply sufficient FS and ESOL qualified teachers throughout March-September from 2019 for the duration of the contract, to support the delivery of the Recruit English Package (REP) to Gurkha recruits at the Infantry Training Centre (ITC), Catterick Garrison. The course culminates in UK National FS assessments and teachers will deliver a predominantly Adult Literacy Core Curriculum supported by English for Speakers of Other Languages (ESOL) methods to non UK Learners.
2. The Provider shall deliver English FS EL3 Reading and Writing and English FS L1 Speaking and Listening training
3. The Provider shall deliver ESOL-based learning for Gurkha recruits.
4. The following Training Objectives are listed under the Role Performance Statement for Gurkha as outlined below. All those listed under FS shall be delivered in full by the Provider. Those listed under Cultural Awareness shall be delivered in part (supported) with input from other members of the Authority or shall be delivered in full (fully met) by the Provider.

**5. FUNCTIONAL SKILLS**

<b>ENGLISH FS L1 SPEAKING AND LISTENING AND EL3 READING AND WRITING</b>
Pass FS EL 3 Reading & Writing
Read to FS EL 3
Read & Understand Short Straightforward Texts on Familiar Topics Accurately & Independently
Read & Obtain Information from Everyday Sources
Write to FS EL 3
Write to Communicate Information & Opinions with Some Adaptation to the Intended Audience
Pass FS L 1 Speaking and Listening
Listen & Respond to Spoken Language
Listen for & Identify Relevant Information from Explanations & Presentations on a Range of Straightforward Topics
Listen for & Understand Explanations, Instructions & Narratives on Different Topics in a Range of Contexts
Use Strategies to Clarify & Confirm Understanding (e.g. Facial Expressions, Body Language & Verbal Prompts)
Provide Feedback & Confirmation when Listening to Others
Respond to Questions on a Range of Topics
Speak to Communicate Information, Ideas & Opinions, Adapting Speech & Content to Take Account of the Listener(s) & Medium
Speak Clearly in a Way Which Suits the Situation
Make Requests & Ask Questions to Obtain Information in Familiar & Unfamiliar Contexts
Express Clearly Statements of Fact, Explanations, Instructions, Accounts & Descriptions
Present Information & Ideas in a Logical Sequence & Include Detail & Develop Ideas Where Appropriate

Engage in Discussion with One or More People in Familiar & Unfamiliar Situations, Making Clear & Relevant Contributions that Respond to What Others Say & Produce a Shared Understanding About Different Topics
Make Contributions Relevant to the Situation & the Subject
Follow & Contribute to Discussions on a Range of Straightforward Topics
Respect the Turn-Taking Rights of Others During Discussions
Use Appropriate Phrases for Interruption

## 6. CULTURAL AWARENESS

DEVELOP AWARENESS OF UK CULTURE AND SOCIETY
Develop Awareness of Government Provided Facilities (fully met)
Develop Awareness of Local Authority Medical Facilities (fully met)
Develop Awareness of Local Authority School Facilities (fully met)
Develop Awareness of Local Authority Libraries (fully met)
Develop Awareness of Emergency Services (supported)
Develop Awareness of UK Public Transport Systems (supported)
Develop Awareness of UK Rail Systems (supported)
Visit a Railway Station (supported)
Travel on a Train (supported)
Read a Train Timetable (supported)
Develop Awareness of UK/Local Bus Services (supported)
Visit a Bus Station (supported)
Travel on a Bus (supported)
Read a Bus Timetable (supported)
Develop UK Road Safety Awareness (supported)
Develop Awareness of UK Cultural & Entertainment Facilities (supported)
Visit the Cinema (supported)
Visit a Museum (supported)
Visit a Restaurant (supported)
Visit a Sports Facility (supported)
Visit a Shopping Centre (supported)
Develop an Awareness of UK Domestic Utilities (fully met)
Develop an Awareness of UK Domestic Gas Facilities (fully met)
Develop an Awareness of UK Domestic Water Facilities (fully met)
Develop an Awareness of UK Domestic Electricity Facilities (fully met)
Develop Awareness of UK Societal & Cultural Norms (supported)

7. Ofsted requirements must be met by embedding content on British values, IT security and safeguarding.

## 8. DEFINITIONS



	Definition
Teacher	Means a professional who is qualified at Level 5 FS English, and qualified and experienced in ESOL/TEFL who will manage and deliver appropriate language and culture training to a class of approx. 11-13 Learners of varying abilities in order to meet FS assessment requirements (including assessment/administration of those nationally-recognised assessments).
Helper	Means a professional who is qualified and/ or experienced at Level 5 FS English, and qualified and/ or experienced in ESOL/TEFL who will manage and deliver appropriate language and culture training to a class of approx. 11-13 Learners of varying abilities in order to meet FS assessment requirements (including assessment/administration of those nationally-recognised assessments), who will work to support the teachers
Teacher POC	Means a Teacher, qualified and experienced to the same standard or higher as the Helpers, providing a single POC between the Provider and Helpers for any issues affecting their availability to teach during the course. They must be suitably experienced for the role. The Teacher POC shall also be the main POC with the Authority POC.
Authority POC	The Authority POC will be the Officer in Command of the English Language Wing, who will be the POC between the Authority, Provider and Teacher POC.
Supported	The Provider shall develop classroom based activities, and where possible embed them into the FS curriculum to introduce the learners to these training objectives; this will include lesson plans and any associated resources.
Fully Met	The Provider shall develop classroom based content, and where possible embed it into the FS curriculum, to meet the training objectives; this will include lesson plans and associated resources.

## 9. SCOPE OF REQUIREMENT

9.1 Learners will be broken down into three Wings of between 70 and 100 Learners, totalling 270. The Wings will be split into classes of 11-13 Learners. Wings will be taught consecutively in 2-week blocks (2 weeks on, 4 weeks off), with approximately 100 Learners in Wings A and B and approximated 70 in Wing C. Each class will have a dedicated teacher, and further support will be provided by an additional Helper as required. The 2 Helpers per wing will be allocated to a class as appropriate to allow the Learners to practice skills in smaller groupings or on a one-to-one basis and they will assist in the development of resources and teaching cover for the class teachers where required, in order to meet the requirements of the FS curriculum, achieved through an ESOL route. Performance will be evaluated by the Educational and Training Services Officers at LDW, with managerial oversight by OC LDW. A Teacher POC shall be appointed as the main conduit of information between the Teachers/Helpers and the Authority to forecast and coordinate availability and resources.

9.2 The anticipated Teacher and Helper numbers required are detailed in paragraph 12 - Volumes.

9.3 The unavailability of any teacher shall be covered with a suitable replacement within 24 hours.

## 10. TEACHER RESPONSIBILITIES AND DUTIES

10.1 **Teaching** - each Teacher shall be expected to:

- 10.1.1 Plan and prepare classroom lessons to deliver ESOL education leading to national exams in FS up to L2, but predominantly EL3/L1. Providers must be able to demonstrate their understanding and practical application of ESOL training up to FS L1 (or recognised equivalent).
- 10.1.2 Teach the Learners assigned to them including setting and marking of work.
- 10.1.3 Assess, record, and report on Learner development, progress, and attainment. This will include, but not be limited to, Initial Assessments, Diagnostic Assessments, Individual Learning Plans, Learner Progress Reports, and feedback provided for practice, mock and summative assessments.
- 10.2 **Communication and Support** - each Teacher shall be expected to:
  - 10.2.1 Provide guidance and advice to Learners on educational, social and cultural matters. As part of the curriculum, visits to the local area are planned and funded.
  - 10.2.2 Communicate and consult with other teachers, helpers and members of the Learning Development Wing (LDW) about their Learners.
  - 10.2.3 Use the model-based Defence Learning Environment as a platform for course management and resource sharing.
  - 10.2.4 Participate in meetings arranged to support the delivery of the REP. Fully support external events that will be conducted during the REP. This will include, but not be limited to, a day trip to Whitby Abbey and town. The Authority will provide transport (including driver) and meet any other associated costs. Site entry to the Abbey will be met by the Authority.
- 10.3 **Assessments and Reports** - each Teacher shall be expected to:
  - 10.3.1 Provide or contribute to oral and written assessments and reports relating to individual performance.
  - 10.3.2 Complete final reports on their Learners and their overall performance.
  - 10.3.3 Conduct and mark summative assessment of Learners in line with the awarding body examination requirements.
- 10.4 **Staff Development and Training** - each Teacher shall be expected to:
  - 10.4.1 Participate in LDW-led staff development and performance reviews. These will determine suitability for continued delivery and provide Continuing Professional Development for all teachers.
  - 10.4.2 Provide support to colleagues in developing lesson material and dealing with teaching issues, overseen by the Authority.
  - 10.4.3 Participate in staff induction prior to the commencement of teaching.
- 10.5 **Conduct** - each Teacher shall be expected to:
  - 10.5.1 **Health and Safety:** Comply with Health and Safety Regulations pertaining to the workplace and ITC, to include but not limited to: safe working practices whilst delivering education, safe personal conduct whilst at the ITC, reporting of accidents and near misses, complying with Risk Assessment control measures.
  - 10.5.2 **Discipline:** Comply with and ensure Learners abide by ITC standards of dress and discipline whilst attending lessons.
  - 10.5.3 **Diversity and Inclusion:** Comply with ITC Diversity and Inclusion policy, including but not limited to: appropriate conduct including safeguarding of Learners, reporting of any incidents, compliance and agreement with the Complaints Policy.
  - 10.5.4 **Direction and Tasking:** Follow and support the direction and guidance as lay down by the Authority with regards to course delivery, protocols and arbitration.

10.5.5 **Personal Conduct:** Conduct them-selves accordingly. The ITC is a high profile recruit training establishment with the highest standards, in particular:

10.5.5.1 **Dress:** Smart, sensible work clothes to be worn (no clothes bearing offensive logos or wording, or of a provocative nature).

10.5.5.2 **Professionalism:** Maintenance of professional standards at all times, including not engaging with the Learners socially or outside of working hours, unless cleared by the Authority.

10.5.6 **Security:** Comply with standard ITC security procedures including, but not limited to, the agreement to carry and present identification, and allow the search of personal belongings during security operations if required. Teachers agree to participate in standard MOD Security Clearance checks prior to employment, including DBS.

10.5.7 **Induction:** Attend LDW induction where briefs will be given regarding conduct, the REP and working within the military.

10.6 **Helper Role.** Teachers in the role of 'Helper' shall be expected to complete all of the above but they will not be expected to plan independent work for Learners. The class teacher will plan the sessions and the helper will support this delivery in smaller groups. Typical helper activities include, but are not limited to: assisting marking Learners' work, observing presentations, conducting pronunciation and oral exercises.

10.7 **Teacher POC Role:** The Teacher POC shall be expected to complete all of the duties of Teacher or Helper as appropriate and also act as a single POC between the Teachers, Helpers, Provider and the Authority POC. This will be limited to immediate issues of availability to ensure the Provider is aware, in a timely manner, of any actual and potential shortfalls in provision. This will enable them to meet the requirements set out in paragraph 16 – Service Levels and Performance.

## 10.8 Qualifications and Experience

10.8.1 **Qualifications:** Teachers shall hold a recognised teaching qualification (e.g. PCGE/Cert Ed) and a qualification in Teaching English as a Foreign Language (TEFL/ESOL). TEFL/ESOL qualifications must have been gained through a recognised attendance course and not via online learning.

10.8.2 **Experience:** Teachers shall have practical experience in the delivery of English for Speakers of Other Languages, and in the delivery of FS English. Experience of working with the military is advantageous, but not essential. Previous experience of teaching within LDW is useful but does not guarantee a role in delivering the REP.

10.8.3 **Safeguarding:** Teachers shall have an in date DBS certificate. Training in safeguarding is imperative.

## 10.9 Working Hours and Conditions

10.9.1 **Working Hours:** A notional working day is as follows:

0830	Lessons begin
1000-1030	Morning Break
1200-1245	Lunch Break
1245-1330	Planning Time/ Course meetings/ CPD
1500-1515	Afternoon Break

- 10.9.2 **Flexibility:** Finishing times will be staggered throughout the week in order to align the course with the Learners' additional training requirements. Daily working times are as follows. These times may be subject to change.

Mon	0830-1500
Tue	0830-1700
Wed	0830-1600
Thu	0830-1700
Fri	0830-1500

- 10.9.3 **Continuity:** Teacher continuity throughout the REP is highly desirable. Continuity of teachers for each wing is vital, particularly during weeks 5-6 as the recruits prepare for and sit their EL3 assessments.
- 10.9.4 **Legal Obligations:** The Provider will be required to ensure that staff are fully aware of all national legal obligations imposed on them regarding the workplace. Where such obligations may not exist standard commercial/industrial practice is to be followed. Attention is drawn particularly to the Health and Safety at Work Act 1974.
- 10.9.5 **Work Status:** The Provider is to ensure that all teachers are informed of their work status for Tax reasons and supported to ensure they understand the legal requirements of their status.
- 10.9.6 Accommodation is not available on site for teachers.
- 10.9.7 **Classroom Facilities.** The Authority will provide a classroom per Teacher. Each Teacher classroom will have a desktop computer, sound system, internet connection, smart board and visualiser. The Authority will provide a classroom for the Helpers.

## 11 KEY MILESTONES

- 11.1 **Estimated Dates:** The REP involves 116 full contact teaching days and two days for induction for the Teachers before the course begins. The LDW does not work at weekends. The LDW and the Provider are required to work some bank holidays. 2019 and any future dates are to be confirmed. Previous dates for REP 2018 were as follows:
- 11.2 Induction Days: 1<sup>st</sup> week Mar tbc.
- 11.3 Non-teaching days: Unit Presentations: 1 day in Jul tbc. Cap Badging: 1 day in Sep tbc.

<b>A Wing</b>		
Weeks 1 to 2	26 Mar - 06 Apr 18 (minus Good Fri/Easter Mon)	8 days
Weeks 3 to 4	7 May - 18 May 18	10 days
Weeks 5 to 6	18 Jun - 29 Jun 18	10 days
Weeks 7 to 8	30 Jul - 10 Aug 18	10 days
		Total 38 days
<b>B Wing</b>		
Weeks 1 to 2	9 Apr - 20 Apr 18	10 days
Weeks 3 to 4	21 May - 1 Jun 18	10 days
Weeks 5 to 6	2 Jul - 13 Jul 18	10 days
Weeks 7 to 8	13 Aug - 24 Aug 18	10 days
		Total 40 days
<b>C Wing</b>		
Weeks 1 to 2	23 Apr - 4 May 18	10 days
Weeks 3 to 4	4 Jun - 15 Jun 18	10 days
Weeks 5 to 6	16 Jul - 27 Jul 18	10 days
Weeks 7 to 8	3 Sep - 14 Sep 18	10 days
		Total 40 days

## **12 VOLUMES**

12.1 The anticipated volumes are outlined in the table below. These numbers are subject to change and confirmation of numbers will be provided by the Authority not later than February each year.

Wing	No. of Students	Classes	Class Size	Teachers Required	Helpers Required	Total Teachers
A	108	9	12	9	2	11
B	108	9	12	9	2	11
C	108	9	12	9	2	11

## **13 CONTINUOUS IMPROVEMENT**

- 13.1 Low level CPD will be conducted as standard in the LDW, led by the LDW permanent staff.
- 13.2 The Provider will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 13.3 The Provider is invited to present new ways of working to the Authority during monthly Contract review meetings.
- 13.4 Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

## **14 QUALITY**

- 14.1 The role requires all individuals to be checked by the Disclosure and Barring Service (DBS) and to hold a DBS certificate.

## **15 STAFF AND CUSTOMER SERVICE**

- 15.1 The Authority requires the potential Provider to provide a sufficient level of resource throughout the duration of the Army requirement to teach Gurkha Soldiers English Contract in order to consistently deliver a quality service.
- 15.2 Potential Provider's staff assigned to the Army requirement to teach Gurkha Soldiers English Contract shall have the relevant qualifications and experience to deliver the Contract.
- 15.3 The potential Provider shall ensure that staff understand the Authority's vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.

## **16. SERVICE LEVELS AND PERFORMANCE**

<b>Key Performance Indicator (KPI) / Service Level Agreement (SLA)</b>	<b>Service Area</b>	<b>KPI/SLA description</b>	<b>Target</b>
1	Poor Performance of Teacher as assessed by the Authority against Ofsted Teaching Criteria 1-4	Once poor performance has been identified a replacement is found within 24 hours. This would mean unsuitable teaching practice or violations of Safeguarding, D&I policy, or behaviour that is seen as inappropriate in this working environment.	99.5%
2	Delivery	If staff members, for any reason, are unable to work for any given day a replacement is required within 24hrs for unanticipated absence. For foreseeable absences, full cover must be provided.	99.5%
3a	Recruit Performance	Recruits are to pass the EL3 Reading and Writing and L1 Speaking and Listening by wk 8 of training.	100%
3b	Recruit Performance	Recruits who achieve E3 on initial assessment are to attain L1 literacy by the end of the wk 8 of training.	70%
4	Delivery	Embed content to develop and meet agreed 100% of Training Objectives.	100%

## **17 SECURITY REQUIREMENTS**

17.1 To access the site photo ID will need to be presented at the gate.

## **18. LOCATION**

18.1 The location of the Services will be carried out at Catterick Garrison.

**INFANTRY RECRUITS - FUNCTIONAL SKILLS MATHS AND ENGLISH EDUCATION UP TO AND INCLUDING ENTRY LEVEL 3 FOR THOSE RECRUITS WHO ARE INITIALLY ASSESSED BY THE ARMY AT EL2 AND /OR CANNOT PROVIDE THEIR QUALIFICATION**

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- 1.2 Outline requirement
- 1.3 The recruit (learner) population
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**Chapter 2 - Educational requirements**

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- 4.1 General
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## **Chapter 1 – Introduction**

### **1.1 General situation**

1.1.1 The ITC conducts all Standard Entry (SE) infantry training for soldiers over the age of 17. Junior Entry (JE) for those aged 16-17 is conducted at the Army Foundation College and is outside the scope of this SOR.

1.1.2 The ITC trains in the region of 3000 recruits per year. Recruits complete the Combat Infantryman's Course (CIC); 26-28 weeks of physically and mentally demanding training to take an individual from civilian to fully trained soldier. On completion of the course the soldiers will join their regiments and be ready to deploy anywhere in the world.

1.1.3 The CIC trains recruits in all the skills they need to be an infantryman including: personal administration, weapons training, fieldcraft, fitness, teamwork and drill. In addition recruits commence their Combat Infantryman's Apprenticeship which includes a number of elements including an NVQ Level 2 in Employability Skills.

1.1.4 Recruits join the Army via a process of interviews and assessments conducted by an organisation separate to the ITC. There are no minimum academic qualifications required to join the infantry, however recruits need to pass a minimum educational standard which is currently set at Initial Assessment Entry Level 2 (IA EL2) in English and Mathematics.

1.1.5 The CIC requires basic competence in Functional Skills (FS) English and Mathematics to allow recruits to quickly assimilate training and achieve performance standards. There is a core requirement of English and Mathematics functionality in many areas of infantry training including: navigation, marksmanship and signals.

1.1.6 Although recruits are accepted into the Infantry at IA EL2, they are expected to achieve Entry Level 3 (EL3) before the end of training. Whilst the majority of recruits join having already achieved EL3 qualification or higher, a significant minority arrive without qualifications and assessed at IA EL2.

1.1.7 The ITC employs a specialist Functional Skills Development Manager (FSDM) whose purpose is to identify, support and manage those personnel who require additional FS development. The FSDM also manages any external FS provision and carries out associated Quality Assurance (QA).

### **1.2 Outline requirement**

1.2.1 The full detail of the requirement is set out further in this SOR.

1.2.2 The requirement is to provide nationally assessed FS Mathematics and English education up to and including EL3 for those ITC recruits who are Initially Assessed by the Army at EL2 and/or cannot prove their qualification at EL3.

1.2.3 FS shall be delivered through full time course based provision, typically 2-3 weeks of intensive education (although alternate models may be considered if required to meet the aims of infantry training) culminating in a national assessment.

1.2.4 The Provider shall own, develop, and deliver an appropriate Mathematics and English FS syllabus together with the FSDM to meet the needs of the learners in order to achieve EL3 in both subjects. The syllabus shall be contextualised to military training, in conjunction with input from the FSDM.

1.2.5 Provision shall be inclusive for all educational abilities, including Special Educational Needs (SEN).

1.2.6 Provision shall be flexible to support varying numbers of students according to the educational standards of those joining the ITC, with an anticipated throughput of no more than 400 learners per annum. There is no minimum number as this is entirely dependent upon the numbers and educational standards of the recruits entering service.

1.2.7 All costs, unless otherwise agreed, shall be met by the Provider through the routine draw down of funding from UK Governmental sources (e.g. Education and Skills Funding Agency).

1.2.8 There is to be equality of provision in line with the Equality Act 2010.

1.2.9 Provision shall meet the minimum requirements for the Safeguarding of vulnerable persons, including those under 18, and Health and Safety in line with UK regulations.

### **1.3 The recruit (learner) population**

1.3.1 The Provider shall expect to deliver to a predominantly male learner group, although there are likely to be some females due to the British Army opening its recruiting to females in Ground Close Combat roles.

1.3.2 The minimum age of recruit is 17 years and the maximum is 33 (entering training before their 33<sup>rd</sup> birthday).

1.3.3 The recruits come from all areas of the UK and Ireland and can expect to have regional variations in school background, and in regional accents and use of slang.

1.3.4 Recruits may also join if they are a citizen of a Commonwealth country or hold British Overseas Territories Citizenship. Similarly recruits who hold British Citizenship, but were not necessarily born or educated in the UK may join. This means that some of the recruit population will have learner needs typically covered in English for Speakers of Other Languages (ESOL) approach to teaching and learning.

1.3.5 All recruits will come from the ITC. There is no requirement within this SOR to provide education for any other part of the Army or Catterick Garrison.

1.3.6 Those recruits joining the Army with few or no formal qualifications, and requiring completion of additional FS education to reach the EL3 output standard, can be expected to have varying attitudes and expectations with regards to education in line with their peers nationally. This is notwithstanding the requirement for all recruits to comply with the Army's Values and Standards described in para 1.4.1.1.

1.3.7 Historically between 10-15% of recruits arriving at the ITC require some additional FS support. It is anticipated that the figure is unlikely to exceed more than 400 per annum. There is no prescribed minimum number and actual numbers depend upon many factors including, but not limited to:

1.3.7.1 Educational standards of recruits joining the Army: the average level of education on joining will vary in accordance with a large number of social, economic and other factors influencing the UK population at large.

1.3.7.2 Army recruiting policy: policy is currently set at recruiting at a minimum of IA EL2, this could change over time with developments in policy.

1.3.7.3 Number of recruits joining the Infantry. Recruit input numbers are flexed to meet the need of the Army's Infantry battalions, resulting in annual changes to the number of recruits commencing training at the ITC.

1.3.7.4 Governmental policy on school leaving age, standards and examinations.

1.3.8 As required some recruits will complete a Diagnostic Assessment (DAss), run by the Authority, in order to provide an in depth assessment of their educational standard. This is used to stream recruits to attend Provider run courses. The Authority will provide via the FSDM current qualification levels, IA data and Individual Learning Plans (ILPs) for all recruits requiring FS support.

### **1.4 Core values of provision**

1.4.1 The Authority seeks to train, support and develop all recruits in order that they can maximise their potential and meet the requirements of the infantry. The core values of the FS education provision shall be:

1.4.1.1 **Supportive of the Army Core Values and Standards.** The Army expects all soldiers to demonstrate and abide by its Core Values and Standards<sup>1</sup>. The Provider is to be supportive of these Values and Standards and not knowingly undermine or contradict them within its provision.

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<sup>1</sup> Army Values and Standards. Values: Courage, Discipline, Respect for Others, Integrity, Loyalty, Selfless Commitment. Standards: Behaviour that is lawful, appropriate, and totally professional.

1.4.1.2 **Inclusive.** Recruits are to have full access to a differentiated education regardless of ability, ethnicity, sexual orientation, or Special Educational Need (SEN).

1.4.1.3 **Performance driven.** Education is to be delivered to a consistently high standard and formal exam pass rates are to be high (in line with Funding Body regulations on success rates).

1.4.1.4 **Committed to Continuous Improvement.** The Provider shall consistently seek to improve provision and standards in line with developments in the wider UK provision of FS.

1.4.1.5 **Safe.** Recruit Safeguarding and wellbeing is to be at the core of delivery.

1.4.1.6 **Flexible.** Educational provision shall be flexible to meet the ITC variations in numbers and individual learner requirements.

1.4.1.7 **Partnership based.** Provision is to be delivered in partnership with specialist input from the FSDM. This will normally involve elements of joint planning and sharing of information.

## 1.5 Location

1.5.1 The Provider shall deliver the service within the ITC

## 1.6 Duration of requirement

1.6.1 The requirement is to commence 01 Sep 2018 and end 31 Aug 2021, notwithstanding the potential variations in numbers as detailed in paras 1.2.6 and 1.3.7. The contract will be limited in duration in accordance with Ministry of Defence contractual regulations.

## **Chapter 2 – Educational requirements**

### **2.1 Curriculum**

2.1.1 The Provider shall deliver Functional Skills Mathematics and English to recruits selected by the FSDM

2.1.2 Delivery of FS education shall be in accordance with the Adult Core Curriculum/Functional Skills National standards for English and Mathematics .

2.1.3 The Provider shall, at every available opportunity, deliver a curriculum that is contextualised to military service. The Authority will provide Subject Matter Expert (SME) support to review and provide feedback on contextualised resources.

### **2.2 Level of attainment**

2.2.1 Recruits are to achieve certified Entry Level 3 in both English and Mathematics from a generalised start standard of IA EL2 to include free writing and dictation.

2.2.2 There may be requirements for recruits to attain EL2 if the individual is identified by the FSDM as particularly struggling. In addition there may be requirement for L1 /L2 provision for those who can work from EL2/3 within their stretch FS programme or those who have extra available time e.g. due to injury.

2.2.3 The Provider shall inform and discuss with the FSDM at the earliest opportunity, any recruit who is struggling to meet the performance requirement.

### **2.3 Examinations**

2.3.1 Examinations shall be conducted through a recognised national awarding body.

2.3.2 Examinations shall be available both online and through paper based testing, and delivered as appropriate in consultation with the recruit and their teacher.

### **2.4 Entry standards**

2.4.1 The recruits requiring FS support will have been IA at EL2, and/or have been Diagnostically Assessed (DAss) by the FSDM and identified as requiring additional FS support.

### **2.5 Language**

2.5.1 All education shall be delivered in English by teachers who have nationally accepted high standards of speaking, listening, reading and writing comprehension.

### **2.6 Teaching standards**

2.6.1 The Provider shall supply 3 x teachers. These teachers are to hold the following qualifications as a minimum:

2.6.1.1 A nationally recognised teaching qualification (e.g. Cert Ed, PGCE).

2.6.1.2 A minimum of a Level 4 specialist qualification in Literacy, Numeracy and ESOL as appropriate to each specific FS subject/ courses being taught.

2.6.2 Any specialist SEN support shall be provided by someone appropriately qualified. Assessors must hold L7 or equivalent as specified by JCQ, including at least 100 hours relating to individual specialist assessment.

2.6.3 Teachers shall adopt appropriate teaching practice and techniques, accounting for learning style and differentiation of learner need.

2.6.4 Teachers shall be competent in the use of classroom technologies and resources as equipped by the Provider. Familiarisation training will be provided by the Authority for any equipment to be used if teaching at the ITC.

2.6.5 Teachers shall be current in practice, and undergo regular evidenced Continuing Professional Development (CPD) and assessment/reviews of practice.

2.6.6 If Teaching Assistants are used, they are not to be in place of regular teaching staff, and shall be suitably qualified.

2.6.7 All staff shall be cleared in accordance with current UK policy regarding the Safeguarding of Children and Vulnerable Adults; to include Criminal Records Bureau checks or equivalent as required.

2.6.8 All staff shall undergo an ITC induction, as required, in order to better understand the recruit and their responsibilities to them.

## **2.7 Class sizes and teaching ratios**

2.7.1 Appropriate teacher-student ratios shall be maintained. These should not exceed 18 students per teacher.

## **2.8 Classroom equipment and learning technologies**

2.8.1 Lesson delivery shall be supported by appropriate equipment and learning technologies; suitable for ability and class size.

## **2.9 Homework**

2.9.1 Additional work can be given to learners for completion outside of core teaching periods (homework), however this will be decided in agreement with the FSDM as the Authority representative.

2.9.2 Any additional tasks set are shall be properly marked in a timely manner, and feedback provided.

## **2.10 Course lengths**

2.10.1 Recruits will normally be released as follows to complete FS education:

2.10.1.1 English only – 2 weeks or as required to meet minimum funding authority requirements (particularly with regards to age 16-19 provision).

2.10.1.2 Mathematics only – 2 weeks or as required to meet minimum funding authority requirements (particularly with regards to age 16-19 provision).

2.10.1.3 English and Mathematics – 3 weeks or increased as required to meet funding authority requirements (particularly with regards to age 16-19 provision).

2.10.2 Provision will normally be through full time attendance, however the Authority may require part time attendance if required.

## **2.11 Service Levels and Performance**

:

Key Performance Indicator (KPI) / Service Level Agreement (SLA)	Service Area	KPI/SLA description	Target
1	Poor Performance of Teacher as assessed by the Authority against Ofsted Teaching Criteria 1-4	Once poor performance has been identified a replacement is found within 24 hours. This would mean unsuitable teaching practice or violations of Safeguarding, D&I policy, or behaviour that is seen as inappropriate in this working environment.	99.5%
2	Delivery	If staff members, for any reason, are unable to work for any given day a replacement is required within 24hrs for unanticipated absence. For foreseeable absences, full cover must be provided.	99.5%
3	Recruit Performance	Recruits are to pass the EL3	95%
4	Delivery	Embed contextualised content to develop and meet agreed Training Objectives.	70%

## **Chapter 3 – General supporting requirements**

### **3.1 Discipline**

3.1.1 The Authority will maintain overall responsibility for recruit discipline.

3.1.2 The Provider shall have an articulated and auditable framework in place to allow teachers monitor learner behaviour. It is to detail associated rewards and sanctions. This is to support and reflect the standards of conduct and discipline that the Authority expects of its recruits.

3.1.3 Rewards and sanction frameworks shall include detail on the hierarchy of responsibilities, clear agendas, and expectations of behaviour. Rewards and sanctions are to be approved by the Authority prior to use.

3.1.4 The Authorities representative FSDM shall be informed if any sanction is imposed on a recruit (e.g. removal from class, verbal rebuke etc).

3.1.5 Sanctions are to be carried out in compliance with Safeguarding measures. The use of capital punishment is prohibited.

### **3.2 Attendance**

3.2.1 The Provider shall monitor attendance and inform the Authority if any individual fails to attend a session, regardless of reason.

### **3.3 Safeguarding and the Care of Trainees (CoT)**

3.3.1 The Provider shall follow nationally recognised good practice in its approach to the Safeguarding of vulnerable adults within the learning and skills sector<sup>2</sup>

3.3.2 The Provider shall detail policies, dedicated staff, systems, training, and procedures that recognise and implement its legal and moral duty to promote the Safeguarding of vulnerable adults.

3.3.3 Staff shall only make physical contact with or restrain recruits if it is necessary to protect them or others from immediate danger.

3.3.4 The Authority shall be informed immediately of any allegations or incidents with regards to Safeguarding.

3.3.5 The Provider shall comply with any additional procedures that the Authority requires in implementing its own Care of Trainees (CoT) system.

### **3.4 Security**

3.4.1 The Provider shall have in place infrastructure, mechanisms and process to ensure the daily security of all learners, with regards to any Provider facility external to the ITC. Typically this includes awareness training for staff, controlled access, and facilities that are secured when not in use.

3.4.2 The Provider shall cooperate, and assist where appropriate, with the Authority with regards to the maintenance of security for Service Personnel. In particular the Provider is to note the potential increased threat to Service Personnel with regards to security issues including; personal safety, terrorism, and espionage.

3.4.3 The Provider shall allow access to any teaching facilities external to the ITC by MOD security personnel, for the purpose of assessing and/or reviewing the suitability of security, should the situation arise.

### **3.5 Equality and Diversity**

3.5.1 The Provider shall comply with UK national standards regarding Equality and Diversity.

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<sup>2</sup> The publication Safer Practice Safer Learning – produced by NIACE and DfES details a whole organisation approach to Safeguarding adults.

3.5.2 The Provider shall have in place processes and frameworks to allow reporting and recording of actions that are intolerant, racist, sexist or homophobic. The Provider is to report any incidents to the Authority.

3.5.3 The Provider shall create a learning environment that is supportive and free from discrimination, bullying and harassment.

### **3.6 Data Protection**

3.6.1 Personal information about recruits is to be stored securely and in compliance with the Data Protection Act 2018.

3.6.2 The Provider shall grant individuals access to any personal information they hold about that individual in accordance with Freedom of Information Act 2000, if so requested.

3.6.3 The Provider shall grant the Authority access to learner files and records as and when required, in order to allow updating of central qualifications registers and Authority sponsored quality assurance/standards teams.

### **3.7 Data management**

3.7.1 The Provider shall maintain learner files for a minimum of 3 years.

3.7.2 The Provider shall maintain evidence of individual attainment for a minimum of 5 years.

3.7.3 The Provider shall produce an electronic summary of predicted results against the nominal roll within 5 days of courses ending, and follow this with originals of pass/fail notifications and certificates within 8 weeks, allowing time for national examination body marking and processing.

### **3.8 Finance**

3.8.1 All costs, unless otherwise agreed, will be met by the Provider through the draw down of funding from UK Governmental sources (e.g. Education and Skills Funding Agency). This includes incidental expenditure such as staff travelling to different locations.

3.8.2 No cost is to be levied to individual students. Any claims for additional funding resource are to be formally raised through the contract management process.

3.8.3 The Provider shall be responsible for any infrastructure and utility costs at Provider owned sites.

### **3.9 Infrastructure**

3.9.1 Any Provider resourced infrastructure shall be suitable and maintained appropriate to the size and spectrum of delivery.



### **3.10 Working hours**

3.10.1 The Provider shall be prepared to deliver FS in accordance with the ITC working year. This is 50 weeks allowing for a 2 week stand down over Christmas and New Year. There is no other formal stand down periods within the year.

3.10.2 FS requirement and provision is anticipated to be approximately evenly spread throughout the working year.

3.10.3 The standard working week is Monday to Friday.

3.10.4 The standard FS working day is 5½-6 contact hours, with 1 hr for lunch. Start and finish times might flex, but are generally 0830-1530hrs. Recruits will travel from accommodation to place of learning outside of these times. Homework/revision would occur outside of these times

### **3.11 Health and Safety**

3.11.1 The Provider shall comply with all UK national standards and policies involving the Health and Safety of personnel in accordance with the Health and Safety at Work Act 1974.

3.11.2 The Provider shall immediately report any accidents involving recruits to the Authority.

3.11.3 Any Provider employed personnel who are required to work within the ITC shall comply with local procedures for Safety Health Environment, Energy Efficiency and Fire.

### **3.12 Media**

3.12.1 The Provider is not permitted to use any Authority brands or logos without prior written permission by the Authority.

3.12.2 The Provider is not permitted to use recruits in media events or publications without prior written permission by the Authority.

## **Chapter 4 – Quality Assurance**

### **4.1 General**

4.1.1 The Provider shall be committed to developing the quality of provision and have a culture of Continuous Improvement within the organisation.

4.1.2 The Provider shall have in place processes and management systems that monitor quality and identify ways of improvement. Typically this will include elements of self assessment and quality improvement planning.

4.1.3 The Provider shall be responsive to changes identified through internal or external quality checks.

### **4.2 Access to inspectors**

4.2.1 The Provider shall provide access to MOD sponsored quality assurance/standards teams including but not limited to:

4.2.1 The Army Inspectorate.

4.2.2 ITC Inspection Teams.

4.2.3 Ofsted if required as part of their inspection of the ITC.

### **4.3 FSDM Quality Assurance**

4.3.1 The ITC FSDM is the Authority's Subject Matter Expert (SME) in all matters regarding the delivery, assessment and management of Functional Skills Literacy and Numeracy, and SEN support within the ITC.

4.3.2 The Provider shall allow the FSDM access to any part of provision, in any location and at any time in the process, in order to conduct Quality Assurance. This includes observation of teaching and learning.

4.3.3. The Provider shall be expected to work within FSDM guidance on the development of teaching materials and is to consult that individual with regards to any low level (daily operational) changes or issues with provision.

4.3.4 The Provider shall be prepared to justify teaching practice, suitability of teaching staff, and any other aspect of provision to the FSDM, within the spirit of Continuous Improvement.

### **4.4 Access to reports and information.**

4.4.1 The Authority shall be granted open and timely access to any reports and information which support reviews of Provider compliance with the SOR.

4.5.3 The Authority's representatives for management decisions are:

4.5.3.1 Strategic Oversight: Commanding Officer Infantry Training Centre. An Army lieutenant colonel who will be the senior officer responsible for the contract. They will liaise at board level as required.

4.5.3.3 Operational Management: Officer Commanding Learning Development Wing (OC LDW). An Army major who acts as the Designated Officer responsible for the overall operational management of the contract. They will act as the ITC representative and Chair the quarterly review meetings.

4.5.3.3 Daily Management: Functional Skills Development Manager (FSDM). A Civil Service FS specialist who acts as the Authority's SME, and is the person responsible for all daily/weekly management of the contract in association with the Provider. The FSDM will deal with day to day management issues.

**Schedule 09 - Acceptance Procedure (i.a.w. condition 29) for Contract No: CB/BFG/0153**

**Schedule 10 - Deliverables – IPR and Relevant DEFCONS for Contract No: CB/BFG/0153**

<b>Deliverable</b>	<b>DEFCON</b>
Interim Quality Reports	90
Learner Feedback Questionnaires (blank template)	90
Learner Feedback Questionnaires (completed)	703
Individual Learning Plans (blank template)	90
Individual Learning Plans (completed)	703
Individualised Learner Record (blank template)	90
Individualised Learner Record (completed)	703
Self Assessment Reports	90
Any correspondence/meeting RODs	90
Course Package Report	90
Final Report	90
Any work produced by students	703

**These deliverables are applicable to both Gurhka and non-Gurkha requirements.**

