



## Combat Air Strategy Team

**Contract No: 701005378**

**For:**

**CESTIUS Phase 1**

<b>Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</b>	<b>And</b>
<b>Team Name and address:</b> Combat Air Strategy Team (CAST) Spruce 2A #1202 MOD Abbey Wood Bristol BS34 8JH	<b>Contractor Name and address:</b> General Dynamics UK Limited Castleham Road St Leonards-on-sea Hastings TN38 9NJ
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## Terms and Conditions

### Standardised Contracting Terms – Contract 701005378

#### SC2

#### 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 agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause 4.a, 4.b and 4.c shall be amended to read:

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

b. Subject to condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

Clause 40.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination

of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

f. Each Party agrees with each other Party that the provisions of this condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

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

## **5. Precedence**

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

(1) Conditions 1 - 44 (and 45 - 47, if included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);

(2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);

(3) the remaining Schedules; and

(4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition 40 (Dispute Resolution).

## **6. Amendments to Contract**

a. Except as provided in condition 31 all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.

b. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause 6.a above has been issued.

## **7. Variations to Specification**

a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.

- b. Any variations that cause a change to:
  - (1) fit, form, function or characteristics of the Contractor Deliverables;
  - (2) the cost;
  - (3) Delivery Dates;
  - (4) the period required for the production or completion; or
  - (5) other work caused by the alteration,shall be the subject to condition 6 (Amendments to Contract). Each amendment under condition 6 shall be classed as a formal change.

## **8. Authority Representatives**

- a. Any reference to the Authority in respect of:
  - (1) the giving of consent;
  - (2) the delivering of any Notices; or
  - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this condition 8.
- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition 6 (Amendments to Contract).

## **9. Severability**

- a. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
  - (1) such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
  - (2) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

## **10. Waiver**

- a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

## **11. Assignment of Contract**

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

## **12. Third Party Rights**

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own

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

### **13. Transparency**

a. Subject to clause 13.b but notwithstanding condition 14 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with clause 13.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 – Contractor's Commercially Sensitive Information.

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 13.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this condition 13 shall affect the Contractor's rights at law.

### **14. Disclosure of Information**

a. Subject to clauses 14.d, 14.e, 14.h and condition 13 each Party:

- (1) shall treat in confidence all Information it receives from the other;
- (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
- (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

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

- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
- (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses 14.a and 14.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses 14.a and 14.b shall not apply to any Information to the extent that either Party:

- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
- (3) can show:



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

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

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

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

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

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

f. The Authority may disclose the Information:

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

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

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

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

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

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

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

g. Before sharing any Information in accordance with clause 14.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

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

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

#### **15. Publicity and Communications with the Media**

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

#### **16. Change of Control of Contractor**

a. The Contractor shall notify the Representative of the Authority at the address given in clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section  
Strategic Supplier Management Team  
Spruce 3b # 1301  
MOD Abbey Wood,  
Bristol, BS34 8JH

The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

c. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.

d. If the Authority exercises its right to terminate in accordance with clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 16.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

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

#### **17. Environmental Requirements**

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

#### **18. Contractor's Records**

a. The Contractor and its sub-contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the

Authority when requested on reasonable notice.

b. The Contractor and its sub-contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

(1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and

(2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under clause 1 of this Condition, and subject to the provisions of SC2 conditions of contract clause 14, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 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 the recipient's Business and otherwise on the first Business Day of the recipient immediately following the day of delivery;

(2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;

(3) if sent by facsimile or electronic means:

(a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

## **20. Progress Monitoring, Meetings and Reports**

a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.

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

- (1) performance/Delivery of the Contractor Deliverables;
- (2) risks and opportunities;
- (3) any other information specified in Schedule 3 (Contract Data Sheet); and
- (4) any other information reasonably requested by the Authority.

## **SUPPLY OF CONTRACTOR DELIVERABLES**

### **21. Supply of Contractor Deliverables and Quality Assurance**

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

b. The Contractor shall:

- (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
- (2) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

c. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

d. The Contractor shall:

- (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
- (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
- (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

### **22. Marking of Contractor Deliverables**

a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).

b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

c. The marking shall include any serial numbers allocated to the Contractor Deliverable.

d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 23 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

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

a. Packaging responsibilities are as follows:

- (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
- (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request

such instructions from the Authority before proceeding further.

(3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all subcontractors.

(4) Where the Contractor or any of their subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:

(1) The Contractor shall provide Packaging which:

(a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and

(b) is labelled to enable the contents to be identified without need to breach the package; and

(c) is compliant with statutory requirements and this Condition.

(2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

(a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;

(b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 23.i to 23.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and

(c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 23.i to 23.k.

c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

(1) The Health and Safety At Work Act 1974 (as amended);

(2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);

(3) The REACH Regulations 2007 (as amended); and

(4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

(1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and

(2) The Air Navigation (Amendment) Order 2019.

e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables).

f. The Contractor shall comply with the requirements for the design of MLP which include clauses 23.f and 23.g as follows:

(1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise

are of an equivalent standard.

(a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCP-SptEng-Pkg

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCP-SptEng-PK@mod.uk

(b) The MPAS Documentation is also available on the DStan website.

(2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).

(3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').

(4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

(5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

(6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

(7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 23.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

(8) The documents supplied under clause 23.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor or their subcontractor is the PDA they shall:

(a) On receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 23.f.

(b) Where the Contractor or their subcontractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:

- i. a list of all SPIS which have been prepared or revised against the Contract; and
- ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 23.g(1)(b).

(2) Where the Contractor or their subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

(3) Where the Contractor or their subcontractor is un-registered and has been given

authority to produce, modify, and update SPIS designs by the Contract, he shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 23.g(1)(b).

(4) Where the Contractor or their subcontractor is not a PDA but is registered, he shall follow clauses 23.g(1)(a) and 23.g(1)(b).

h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (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:

(a) description of the Contractor Deliverable;

(b) the full thirteen digit NATO Stock Number (NSN);

(c) the PPQ;

(d) maker's part / catalogue, serial and / or batch number, as appropriate;

(e) the Contract and order number when applicable;

(f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;

(g) shelf life of item where applicable;

(h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);

(i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and

(j) any additional markings specified in the Contract.

j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

(1) the full 13-digit NSN;

- (2) denomination of quantity (D of Q);
  - (3) actual quantity (quantity in package);
  - (4) manufacturer's serial number and / or batch number, if one has been allocated;
- and
- (5) the CP&F-generated unique order identifier.

k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet).

l. The requirements for the consignment of aggregated packages are as follows:

(1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

(2) Two adjacent sides of the outer container shall be clearly marked to show the following:

- (a) class group number;
- (b) name and address of consignor;
- (c) name and address of consignee (as stated on the Contract or Order);
- (d) destination if it differs from the consignee's address, normally either:
  - i. delivery destination / address; or
  - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
- (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
- (f) the CP&F-generated shipping label; and
- (g) any statutory hazard markings and any handling markings.

m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with condition 7 (Variations to Specification).

n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.

p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with condition 18 (Contractor's Records).



q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.

r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.

s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>

t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.

u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

#### **24. Supply of Hazardous Materials or Substances in Contractor Deliverables**

a. The Contractor shall provide to the Authority:

(1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and

(2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:

(1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 24.h below, and

(2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

c. If the Contractor is required, under, or in connection with the contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).

e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated

Systems.

f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:

- (1) activity;
- (2) the substance and form (including any isotope);

g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under Clause 24.a, any information arising from the provisions of Clauses 24.e, 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

- (1) Hard copies to be sent to:

Hazardous Stores Information System (HSIS)

Department of Safety & Environment, Quality and Technology (DS & EQT)

Spruce 2C, #1260,

MOD Abbey Wood (South)

Bristol BS34 8JH

- (2) Emails to be sent to:

[DESTECH-QSEPEnv-HSISMulti@mod.gov.uk](mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk) Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

i. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

## 25. Timber and Wood-Derived Products

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

- (1) shall comply with the Contract Specification; and
- (2) must originate either:
  - (a) from a Legal and Sustainable source; or
  - (b) from a FLEGT-licensed or equivalent source.

b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

- (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- (2) mechanisms for resolving grievances and disputes including those relating to

tenure and use rights, to forest management practices and to work conditions; and

(3) safeguarding the basic labour rights and health and safety of forest workers.

c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.

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

e. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.

f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with condition 18 (Contractor's Records).

g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

(1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and

(2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

h. The Authority may disclose the Information:

(1) The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

(2) verify the forest source of the timber or wood; and

(3) assess whether the source meets the relevant criteria of clause 25.b.

i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with condition 6 (Amendments to Contract).

j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Representative (Commercial).

k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with condition 6 (Amendments to Contract).

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

(1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking

Programme (more detailed information can be accessed at [www.forestry.gov.uk](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;
- (10) quantities;
- (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 26.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with condition 18 (Contractor Records).

## **27. Access to Contractor’s Premises**

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

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

## **28. Delivery / Collection**

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

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

- (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
- (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) be responsible for all costs of Delivery; and
- (5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

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

- (1) contact the Authority's Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
- (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
- (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
- (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
- (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).

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

- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or
- (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

## **29. Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

- (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
- (2) the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.

## **30. Rejection and Counterfeit Materiel**

### **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, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

**Counterfeit Materiel:**

c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:

(1) notify the Contractor of its suspicion and reasons therefore;

(2) where reasonably possible, and if requested by the Contractor within 10 business days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.

(3) give the Contractor a further 20 business days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c.(2).(i) or the provision of a sample at 30.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and

(4) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel

Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a-30. b (Rejection).

d. In addition to its rights under 30.a and 30.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:

(1) Retain any Counterfeit Materiel; and/or

(2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;

and such retention shall not constitute acceptance under condition 29 (Acceptance).

e. Where the Authority intends to exercise its rights under clause 30.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by the Authority, for:

(1) The separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or

(2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.

f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 30.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

(1) To dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;

(2) to pass it to a relevant investigatory or regulatory authority;

(3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or

(4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at clauses 30.f.(1) to 30.f.(3) shall not constitute acceptance under condition 29 (Acceptance).

g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.f.(4) then the balance shall accrue to the Contractor.

h. The Authority shall not use a retained Article or consignment other than as permitted in this condition 30.c – 30.k.

i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

j. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in this condition 30.c – 30.k except where it has been determined in accordance with condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 30.c.(4). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

### **31. Diversion Orders**

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

b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

c. The Authority reserves the right to cancel the Diversion Order.

d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with condition 6 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

### **32. Self-to-Self Delivery**

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

## **LICENCES AND INTELLECTUAL PROPERTY**

### **33. Import and Export Licences**

a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

(1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

(a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and

(b) the end use as: For the Purposes of HM Government; and

(2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

c. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

(1) the Contractor shall, or procure that the Contractor's subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

(2) the Authority shall provide sufficient information, certification, documentation



and other reasonable assistance as may be necessary to support the application for the requested variation.

f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.

i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.

j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

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

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in condition 34 (Third Party Intellectual Property – Rights and Restrictions).

l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

m. If the information to be provided under Clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 33.l.

n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 33.l or 33.m of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

p. Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are notified to the Contractor by that subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by

issuing an updated DEFFORM 528. Within 14 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 14 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

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

r. In the event that the restrictions notified to the Authority pursuant to Clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 33.l, termination under Clause 33.q will be in accordance with condition 43 (Material Breach) and the provisions of clause 33.v will not apply.

s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.

t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

u. Where:

(1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 33.s or 33.t or both; or

(2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled

under the terms of condition 6 (Amendments to Contract) or condition 7 (Variations to Specification) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of condition 42 (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

### **34. Third Party Intellectual Property – Rights and Restrictions**

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

(1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

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

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

Clause 34.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

b. If the Information required under clause 34.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

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

(1) the Authority has made or makes an admission of any sort relevant to such question;

(2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;

(3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

(4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause 34.c does not extend to use by the Authority of anything

supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

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

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

(1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

(2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

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

(1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.

k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

(2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

(3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

(2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

(1) clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;

(2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;

(3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;

(4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) following a notification under clause 34.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

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

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any

claim or damage which may arise from use of third party IPR.

p. Nothing in condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

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

## **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 36b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36c after a reasonable time has passed.

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 the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.

d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.

f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with condition 40 (Dispute Resolution).

g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

### **38. Debt Factoring**

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition 11 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition 38 shall be subject to:

(1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f

(2) all related rights of the Authority under the Contract in relation to the recovery of

sums due but unpaid; and

(3) the Authority receiving notification under both clauses 38.b and 38.c(2).

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c. The Contractor shall ensure that the Assignee:

(1) is made aware of the Authority's continuing rights under clauses 38.a(1) and 38.a(2); and

(2) notifies the Authority of the Assignee's contact Information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a(1) and 38.a(2).

d. The provisions of condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

### **39. Subcontracting and Prompt Payment**

a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.

b. Where the Contractor enters into a Subcontract he shall cause a term to be included in such Subcontract:

(1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;

(2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;

(3) providing that where the Contractor fails to comply with clause 39.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b(2) after a reasonable time has passed; and

(4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as clauses 39.b(1) to 39.b(4).

## **TERMINATION**

### **40. Dispute Resolution**

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

b. In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

### **41. Termination for Insolvency or Corrupt Gifts**

#### **Insolvency:**



a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

(1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or

(2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or

(3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or

(4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or

(6) where the Contractor is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay his debts if:

(a) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or

(b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

(7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(8) the court making an award of sequestration in relation to the Contractor's estates.

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 England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in clauses 41.a(9) to 41.a(14) inclusive above.

b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

#### **Corrupt Gifts:**

c. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

(1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or

(b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

(2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

d. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

(1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

(2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and

(3) to recover from the Contractor any other loss sustained in consequence of any breach of this condition, where the Contract has not been terminated.

e. In exercising its rights or remedies under this condition, the Authority shall:

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

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

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

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

f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

#### **42. Termination for Convenience**

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) business days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

(1) not start work on any element of the Contractor Deliverables not yet started;

(2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;

(3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;

(4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b(2) and 42.b(3) of this condition.

c. Where this condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 42.b):

(1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:

- (a) in the possession of the Contractor at the date of termination; and
- (b) provided by or supplied to the Contractor for the performance of the

Contract,

except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

(2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

- (c) all such unused and undamaged materiel; and
- (d) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

(3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

d. The Authority shall (subject to clause 42.e below and to the Contractor's compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
- (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:

(1) the name of the Contractor shall be substituted for the Authority except in clause 42.c(1);

(2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) business days; and

(3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this condition 42.

g. Claims for payment under this condition shall be submitted in accordance with the Authority's direction.

#### **43. Material Breach**

a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.

b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

- (1) carrying out any work that may be required to make the Contractor Deliverables

comply with the Contract; or

(2) obtaining the Contractor Deliverable in substitution from another supplier.

**44. Consequences of Termination**

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

**45. Project specific DEFCONs and DEFCON SC variants that apply to this Contract are:**

**General Conditions:**

**DEFCON 014**

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

**DEFCON 023 (SC2)**

DEFCON 023 (SC2) (Edn. 11/17) - Special Jigs, Tooling and Test Equipment

**DEFCON 035**

DEFCON 035 (Edn. 10/04) - Progress Payments

**DEFCON 076 (SC2)**

DEFCON 076 (SC2) (Edn. 11/17) - Contractor's Personnel at Government Establishments

**DEFCON 090**

DEFCON 090 (Edn. 11/06) - Copyright

**Note to DEFCON 90**

Notes: [For the purposes of clause 4c the prescribed Nations are those within NATO & the EU and Australia & New Zealand.]

**DEFCON 091**

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

**Note to DEFCON 91**

Notes: [For the purposes of clause 3e the prescribed Nations are those within NATO & the EU and Australia & New Zealand.]

**DEFCON 126**

DEFCON 126 (Edn. 11/06) - International Collaboration Clause

**DEFCON 514A**

DEFCON 514A (Edn. 03/16) - Failure of Performance under Research and Development

Contracts

**DEFCON 524A**

DEFCON 524A (Edn. 02/20) – Counterfeit Materiel

**DEFCON 532A (SC2)**

DEFCON 532A (SC2) (Edn. 08/20) – Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

**DEFCON 601 (SC)**

DEFCON 601 (SC) (Edn. 03/15) - Redundant Material

**DEFCON 602A**

DEFCON 602A (Edn. 12/17) - Quality Assurance (With Deliverable Quality Plan)

**DEFCON 605 (SC2)**

DEFCON 605 (SC2) (Edn. 11/17) - Financial Reports

**DEFCON 611 (SC2)**

DEFCON 611 (SC2) (Edn. 02/16) - Issued Property

**DEFCON 624 (SC2)**

DEFCON 624 (SC2) (Edn. 11/17) - Use of Asbestos

**DEFCON 627**

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

**DEFCON 632**

DEFCON 632 (Edn. 08/12) - Third Party Intellectual Property - Rights and Restrictions

**DEFCON 647 (SC2)**

DEFCON 647 (SC2) (Edn. 11/17) - Financial Management Information

**DEFCON 658 (SC2)**

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

**DEFCON 658 - Cyber Risk Profile - Very Low**

Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Very Low, as defined in Def Stan 05-138. The Cyber Risk Assessment RAR number is: RAR-ATAV5UXE.

**DEFCON 660**

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

**DEFCON 694 (SC2)**

DEFCON 694 (SC2) (Edn. 08/18) - Accounting For Property of the Authority

**DEFCON 703**

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

**Quality Assurance Conditions:**

**AQAP 2105**

NATO Requirements for Deliverable Quality Plans Edition 2

**AQAP 2210**

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

**AQAP 2310**

NATO Quality Management System Requirements for Aviation, Space and Defence Suppliers. Edition B Version 1

**DEFSTAN 05-057**

Configuration Management of Defence Materiel Issue 6

**DEFSTAN 05-061 Pt 1**

Quality Assurance Procedural Requirements - Concessions Issue 6

**DEFSTAN 05-061 Pt 4**

Quality Assurance Procedural Requirements - Contractor Working Parties Issue 3

**DEFSTAN 05-099**

Managing Government Furnished Assets in Industry Version 1

**DEFSTAN 05-135**

Avoidance of Counterfeit materiel



**46. Special Conditions that apply to this Contract:**

**46.1 Payment Terms**

a. The payment terms that apply to this Contract are in accordance with the Pricing and Payment Conditions at Condition 35 - 39, DEFCON 35 (Progress Payments), and Schedule 3 (Contract Data Sheet).

b. Further to the information at Condition 35.a and Schedule 3, Line Items 1, 2, and 4 of Schedule 2 (Schedule of Requirement) shall be Firm Price.

c. Line Item 5 of Schedule 2 shall be a Firm Price for an hourly rate up to 100 hours. This hourly rate shall only be paid for the effort expended and the hours utilised in order to provide support to the System Integrator in Work Package 4.

d. Line Item 3 of Schedule 2 shall be priced on Cost Plus, previously known as 'Ascertained Costs' principles. These principles are detailed below: -

- i. The Authority shall pay the Contractor's allowable costs together with the profit payable on those costs, associated with completing the work for Line Item 3 of Schedule 2 in accordance with Schedule 9 (Statement of Requirement), up to the Maximum Price detailed in Schedule 2.
- ii. The total amount to be paid by the Authority to the Contractor under the Contract shall not exceed the total Maximum Price detailed in the Schedule of Requirements (Schedule 2) for Line Item 3 without written authority from the Authority's Commercial Representative.
- iii. As part of the overall management of the Contract, the Contractor will closely monitor spend against the Maximum Price for Line Item 3 of Schedule 2. The Contractor shall promptly notify the Authority's Commercial Representative in writing in the event that the aggregate of the Contract payments made by the Authority reaches eighty (80) percent of the total Maximum Price and provide a view on the remaining costs left for Line Item 3 of Schedule 2 and, where applicable, any impact in completing the work.
- iv. If at any time the Contractor determines that the estimated cost, including associated profit, to complete the activities required for Line Item 3 of Schedule 2, in accordance with the Statement of Requirement (Schedule 9), will exceed the Maximum Price detailed against Line Item 3 of the Schedule of Requirement (Schedule 2), the Contractor shall immediately inform the Authority's Commercial Representative and at the same time provide an explanation of the circumstances.
- v. The Contractor and Authority shall then agree an amendment to this Contract to either:
  - 1) Reduce the scope of the Statement of Requirement (Schedule 9) for Line Item 3 such that it can be completed within the Maximum Price detailed in Schedule 2; or
  - 2) Increase the Maximum Price such that the activities can be completed;or
  - 3) Reduce the scope of the Statement of Requirement (Schedule 9) and increase the Maximum Price i.e. a combination of Clauses 46.1.c.v.1 and 46.1.c.v.2.
  - 4) In the event that the Authority deems none of the above options are acceptable, the Authority shall be entitled to terminate the Contract in accordance with the Terms and Conditions.
- vi. Once the allowable costs, together with the profit payable on those costs, have reached the Maximum Price:
  - 1) The Authority shall be entitled to immediately terminate this Contract in accordance with the Terms and Conditions; and
  - 2) The Contractor shall be entitled to suspend work and, in any event, shall not be entitled to claim any further Contract payment from the Authority during the Terms except as may be allowed under Condition 42 (Termination for Convenience).

e. Once the activities for Line Item 3 of Schedule 2 have begun, the Contractor shall submit monthly invoices in accordance with DEFCON 35 (Progress Payments) and supporting evidence for the cost incurred, based on actuals, associated with the work conducted in the period of time specified on the invoice. Once the invoice has been submitted, Condition 36 shall apply.

f. The payments for Line Items 1, 2, and 4 of Schedule 2 shall be made in accordance with the Delivery and Milestone Payment Plan (Schedule 11). Once the Deliverable for that payment has been completed, or submitted and accepted, the Contractor shall submit an invoice for the corresponding value and Condition 36 shall apply.

g. The payments for Line Items 5 of Schedule 2 shall be made in accordance with Schedule 11 and Condition 36. The Contractor shall submit an invoice quarterly with a Firm price for the hours used in that quarter for support, e.g. if 25 hours have been utilised in that quarter, the Contractor shall submit an invoice for the 25 hours at the hourly rate as specified in Schedule 2 and Schedule 11.

#### **46.2 Earned Value Management Requirements**

a. The Earned Value Management level determined for this Contract is Level 5.

b. Level 5 Contractors are not required to produce a detailed master schedule but shall provide a single page plan that reflects the scope of work and time frame required to complete delivery to the Authority. A table of milestones based on payment milestones may be agreeable with the Authority.

c. The Contractor shall provide an in-year spending forecast and shall indicate to the Authority within five days if at any time the Contractor expects that the funds required to complete the contract will exceed the agreed contract value. Additionally, if the funds required within any fiscal year are expected to exceed the amount authorised by the Authority, the Contractor shall notify the Authority within no more than five days.

#### **46.3 Intellectual Property Rights (IPR)**

a. The IPR DEFCON applicable to each Deliverable shall be stated in the Deliverable Item Description at Schedule 10. In the event that new Deliverable(s) are identified, the Intellectual Property Rights Conditions associated shall be agreed between the Contractor and the Authority, and will be enacted through a Contract Amendment in accordance with Condition 6 and Schedule 04 – Contract Change Control Procedure.

b. The PYRAMID Component (Baseline) (DID-CESTIUS-001) and PYRAMID Component (Amended) (DID-CESTIUS-002), shall be subject to DEFCON 91 (Edn 11/06). The deliverable software shall not include Source Code. Suitable pre-compiled executable code shall be provided which is compatible with the target system as specified by the third party Contractor for integration. The deliverable executable software for the components will be made available to a third party Contractor for integration into a single specified sample PYRAMID system. Should the executable code be insufficient for the purpose, at the request of the Authority, the Contractor shall promptly make available sufficient Source Code to enable a competent third party to integrate the Deliverable Software. No additional payment shall be due to the Contractor for delivering this Source Code nor for its use for this purpose, nor for making any such software available for the integrator for CESTIUS purposes. Should the Contractor request it, the Authority shall provide an opportunity for the Contractor to enter into a direct confidentiality agreement with the third party integrator via a Confidentiality Agreement (DEFFORM 94).

c. The Commercial Exploitation Levy applicable to the Software created under this Contract

shall be levied at 80%, of which further information can be found in Schedule 12 (Specimen Agreement for Software Where Percentage Levy Rates Apply).

**46.4 Third Party IPR Authorisation – Authorisation By The Crown For Use Of Third Party Intellectual Property Rights**

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

**47. The processes that apply to this Contract are:**

**47.1 Acceptance Procedure**

a. The Acceptance Procedure that applies to all deliverables submitted by the Contractor shall be in accordance with Schedule 08 - Acceptance Procedure.

## SC2 Schedules

### 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>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><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 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>	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <ul style="list-style-type: none"><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> <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
<b>CPET</b>	means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>Dangerous Goods</b>	<p>means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:</p> <ul style="list-style-type: none"><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</li></ul>

Goods by Rail (RID);  
d. International Maritime Dangerous Goods (IMDG) Code;  
e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;  
f. International Air Transport Association (IATA) Dangerous Goods Regulations.

<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:



- a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or
- b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;

**Firm Price**

means a price (excluding VAT) which is not subject to variation;

**FLEGT**

means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;

**Government Furnished Assets (GFA)**

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

**Hazardous Contractor Deliverable**

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

**Independent Verification**

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

**Information**

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

**Issued Property**

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

<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>	<p>Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user;</p> <p>Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;</p>
<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>	<p>means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure.</p> <p>Recycled Timber covers:</p> <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> <p>it excludes sawmill co-products;</p>
<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>STANAG4329</b>	means the publication NATO Standard Bar Code Symbolologies which can be sourced at <a href="https://www.dstan.mod.uk/faqs.html">https://www.dstan.mod.uk/faqs.html</a> ;
<b>Subcontractor</b>	means any 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;
<b>Virgin Timber</b>	means Timber and Wood-Derived Products that do not include Recycled Timber.

**Annex to Schedule 1 – Additional Definitions of Contract i.a.w Conditions 45 – 47**  
**(Additional Conditions)**

<b>Cost Plus</b>	means the pricing method applied to Line Item 03 of the Schedule of Requirements (SOR) (Schedule 2) where the Contractor will be paid the allowable costs reasonably and properly incurred by him in carrying out the work plus a sum for profit
<b>Deliverable</b>	means the works, 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>Key User Requirement (KUR)</b>	<p>are a set of requirements that have the following characteristic:</p> <ul style="list-style-type: none"><li>• They are key to achievement of the operational need</li><li>• They identify the essential core characteristics of the operational need, once interpreted by the sponsor</li><li>• They will be used by management in particular the Investment Appraisals Committee (IAC), Sponsor and Senior Responsible Owner (SRO)</li></ul> <p>There should be a maximum of 10 requirements but kept to as few as necessary – this is a requirement of the IAC•</p>
<b>Maximum Price</b>	means the total price for Line Item 03 detailed in the Schedule of Requirements (Schedule 2)
<b>Milestone</b>	means a significant stage or event in the Contract such as when a Deliverable is due in accordance with Schedule 11 (Delivery and Milestone Payment Plan)
<b>Milestone Payment</b>	means a Milestone that has a payment value associated with it
<b>Risk Register</b>	means a log or table that contains the identified risks for performing a body of work
<b>Single Statement of User Need</b>	is the highest-level expression of user requirements for a capability

**Schedule 2 – Schedule of Requirements for Contract No: 701005378**

Item No.	Item Details	Total Qty	Price (£) Ex VAT	
			Per Item	Total Inc Delivery**
01	<b>Specification</b> Delivery of Project Management Deliverables in accordance with Work Package 1 – Project Management as per Schedule 09 (Statement of Requirement)	1		
	<b>Delivery Date</b> See Delivery Plan at Schedule 11			
	<b>MOD Stock Ref. No.</b> N/A			
	<b>Packaging requirements inc. PPQ and DofQ *</b> N/A			
02	<b>Specification</b> Delivery of a PYRAMID Component (Baseline) in accordance with Work Package 2 – Component Development in line with Schedule 09 (Statement of Requirement)	1		
	<b>Delivery Date</b> See Delivery Plan at Schedule 11			
	<b>MOD Stock Ref. No.</b> N/A			
	<b>Packaging requirements inc. PPQ and DofQ *</b> Deliverables to be marked with correct IP provisions			
03	<b>Specification</b> Delivery of a PYRAMID Component (Amended) in accordance with Work Package 2 – Component Development in accordance with Schedule 09 (Statement of Requirement)	1		Max Price:
	<b>Delivery Date</b> See Delivery Plan at Schedule 11			
	<b>MOD Stock Ref. No.</b> N/A			
	<b>Packaging requirements inc. PPQ and DofQ *</b> Deliverables to be marked with correct IP provisions			
04	<b>Specification</b> Delivery of a Lessons Learned Report in accordance with Work Package 3 – Lessons Learned Report as per Schedule 09 (Statement of Requirement)	2		
	<b>Delivery Date</b> See Delivery Plan at Schedule 11			

Item No.	Item Details	Total Qty	Price (£) Ex VAT	
	<b>MOD Stock Ref. No.</b> N/A			
	<b>Packaging requirements inc. PPQ and DofQ *</b> Deliverables to be marked with correct IP provisions			
05	<b>Specification</b> Delivery of 100 hours support in accordance with Work Package 4 – Support to System Integration in line with Schedule 09 (Statement of Requirement)	100	Firm Hourly Rate:	Limit of Liability of:
	<b>Delivery Date</b> See Delivery Plan at Schedule 11			
	<b>MOD Stock Ref. No.</b> N/A			
	<b>Packaging requirements inc. PPQ and DofQ *</b> N/A			

**Total Price Inc Delivery \*\***

£440,734

\*as detailed in DEFFORM 96

**\*\*and Delivery if stated in the contract**

**Schedule 3 – Contract Data Sheet**

<b>General Conditions</b>
<b>Condition 2 – Duration of Contract:</b>  <p>The Contract expiry date shall be: 2022/04/08 00:00:00</p>
<b>Condition 4 – Governing Law:</b>  <p>Contract to be governed and construed in accordance with:</p> <p>English Law</p> <p>Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause 4.g (if applicable) are as follows:</p> <p>N/A</p>
<b>Condition 8 – Authority’s Representatives:</b>  <p>The Authority’s Representatives for the Contract are as follows:</p> <p>Commercial: David Welton (as per DEFFORM 111)</p> <p>Project Manager: Aaron Simpson (as per DEFFORM 111)</p>
<b>Condition 19 – Notices:</b>  <p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: Combat Air Strategy Team (CAST), Defence Equipment and Support (DE&amp;S), #1202 Spruce 2A, MOD Abbey Wood, Bristol, BS34 8JH, United Kingdom (as per DEFFORM 111)</p> <p>Contractor: TBC</p> <p>Notices can be sent by electronic mail? Yes</p>
<b>Condition 20.a – Progress Meetings:</b>  <p>The Contractor shall be required to attend the following meetings:</p> <p>As per Appendix A of Schedule 09 - Statement of Requirement</p>
<b>Condition 20.b – Progress Reports:</b>



The Contractor is required to submit the following Reports:

As per Appendix B of Schedule 09 - Statement of Requirement

Reports shall be Delivered to the following address:

Box 2 of DEFFORM 111

#### **Supply of Contractor Deliverables**

##### **Condition 21 – Quality Assurance:**

Is a Deliverable Quality Plan required for this Contract? Yes

If required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within 60 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:

As per Condition 45 - Quality Assurance Conditions

##### **Condition 22 – Marking of Contractor Deliverables:**

Special Marking requirements:

Cover sheet for all deliverables stating what the deliverable is and the IPR associated.

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

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

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

to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: 2021/02/05

##### **Condition 25 – Timber and Wood-Derived Products:**

A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to the Authority's Representative (Commercial)

to be Delivered by the following date: 2021/02/05

**Condition 26 – Certificate of Conformity:**

Is a Certificate of Conformity required for this Contract? No

Applicable to Line Items: N/A

If required, does the Contractor Deliverables require traceability throughout the supply chain?

No

Applicable to Line Items:

**Condition 28.b – Delivery by the Contractor:**

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

All lines as per the SOR

Special Delivery Instructions:

N/A

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

**Condition 28.c - Collection by the Authority:**

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

N/A

Special Delivery Instructions:

N/A

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

Consignor details (in accordance with 28.c.(4)):

Line Items: N/A Address: N/A

Line Items: N/A Address: N/A

Consignee details (in accordance with condition 23):

Line Items: As per SOR Address: Combat Air Strategy Team (CAST), Defence Equipment and Support (DE&S), #1202 Spruce 2A, MOD Abbey Wood, Bristol, BS34 8JH, United Kingdom

Line Items: As per SOR Address: Combat Air Strategy Team (CAST), Defence Equipment and Support (DE&S), #1202 Spruce 2A, MOD Abbey Wood, Bristol, BS34 8JH, United Kingdom

**Condition 30 – Rejection:**

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

The time limit for rejection shall be 20 Business Days.

**Condition 32 – Self-to-Self Delivery:**

Self-to-Self Delivery required? No

If required, Delivery address applicable:

N/A

**Pricing and Payment**

**Condition 35 – Contract Price:**

All Schedule 2-line items shall be FIRM Price other than those stated below:

Line Items 03 which shall be Cost Plus Price

Line Items 05 which shall be Firm Price Hourly Rate

Clause 46. 1 refers

**Termination**

**Condition 42 – Termination for Convenience:**

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

The Notice period for termination shall be 20 Business Days

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

See Annex A to Schedule 3 (DEFFORM 111)

**Schedule 4 – Contract Change Control Procedure (i.a.w. Clause 6b) for Contract No: 701005378**

**1. Authority Changes**

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

**2. Notice of Change**

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

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

**3. Contractor Change Proposal**

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

b. The Contractor Change Proposal shall include:

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

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

**4. Contractor Change Proposal – Process and Implementation**

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

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

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

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

c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b. (1) above.

## **5. Contractor Changes**

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

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

Contract No: 701005378
Description of Contractor's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters:  Name:  Position:  Address:  Email Address:

**Schedule 6 – Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract**

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

Contract No: 701005378

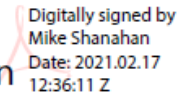
Contract Title: CESTIUS Phase 1

Contractor: General Dynamics United Kingdom Limited

Date of Contract: 26<sup>th</sup> April 2021

\* 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: **Mike Shanahan**  Digitally signed by Mike Shanahan  
Date: 2021.02.17 12:36:11 Z

Name: Michael Shanahan

Job Title: Senior Commercial Manager

Date: 17<sup>th</sup> February 2021

\* 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)  
Department of Safety & Environment, Quality and Technology (D S & EQT)  
Spruce 2C, #1260  
MOD Abbey Wood (South)  
Bristol BS34 8JH

Emails to be sent to:

[DESTECH-QSEPEnv-HSISMulti@mod.gov.uk](mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk)

**Schedule 7 – Timber and Wood- Derived Products Supplied under the Contract**

The following information is provided in respect of condition 25 (Timber and Wood-Derived Products):

<b>Schedule of Requirements item and timber product type</b>	<b>Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence</b>	<b>Volume of timber Delivered to the Authority with other evidence</b>	<b>Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy</b>	<b>Total volume of timber Delivered to the Authority under the Contract</b>
All (1-5)	Nil	Nil	Nil	Nil

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

1. The procedure and timescales for Acceptance of a Deliverable is detailed below:

a. Prior to the submission of the final version of a Deliverable, the Contractor shall work with the Authority/Technical Authority to review any draft Deliverables and discuss feedback or comments for incorporation into the final version of the Deliverable. The Contractor is encouraged to discuss progress made against draft versions of Deliverables in between draft reviews. The Contractor shall submit draft Deliverables for review and feedback by the following dates, and prior to final submission:

<b>Deliverable</b>	<b>Draft Submission Date (no later than)</b>
Delivery of draft PYRAMID Component (Baseline)	21 <sup>st</sup> July 2021
Delivery of draft Lessons Learned Report Version 1	28 <sup>th</sup> July 2021
Delivery of draft PYRAMID Component (Amended)	29 <sup>th</sup> September 2021
Delivery of draft Lessons Learned Report Version 2	6 <sup>th</sup> October 2021

b. The Contractor shall submit the final version of the Deliverables and accompanying Deliverable Acceptance Form (DAF) (Annex A) to the Authority's Representative by 1700 hours on the specified days. Deliverables submitted after 1700 hours, or on a Non-Business Day, will not count as submitted until the next Business Day.

c. For the Acceptance of software Deliverables, the Contractor shall be required to host Customer Acceptance Events in which the demonstration of component functionality in an appropriate test harness/environment shall be observable to the Authority/Technical Authority. If the demonstration reveals any failures to meet the acceptance criteria, a route forward will be agreed with the Authority.

d. The Authority's review period will begin the next Business Day after the Deliverable is submitted. If the Deliverable is submitted after 1700 hours on the specified day, the review period will begin the next Business Day.

e. The Authority shall Accept or Reject within twenty (20) Business Days of receiving the Deliverable, in the case of rejection the process at 1.f shall apply.

f. The Contractor shall make changes that caused Rejection and re-issue the Deliverable within ten (10) Business Days of feedback being received. Where the Deliverable

cannot be resubmitted within ten (10) Business Days, the Contractor shall agree a revised Delivery date with the Authority and this Acceptance Process 1.d – 1.f shall apply. Resubmission of any Deliverable must be by 1700 hours; any Deliverable submitted after this time, or on a Non-Business Day, will not count as submitted until the next Business Day.

2. Non-Business Days, for the purposes of Condition 1.b – 1.e, shall be defined as all UK Public Holidays, weekends, and the following periods:

- a. 20st December 2021 – 3rd January 2022 (inclusive)

3. Where the Deliverable is forecast to be late, the Contractor will inform the Authority ten (10) Business Days before the Deliverable due date and will provide a forecast delivery date as well as an explanation why the Deliverable will not be submitted on time. The impact shall be managed via the Authority's Representatives.
4. The Deliverable Acceptance Form (DAF) shall be in accordance with the template at Annex A of this document.
5. The Authority's Representative shall confirm the receipt of the Deliverables to the Contractor.
6. The Authority's Representative shall assess the Deliverable in accordance with the assessment criteria contained in each unique Deliverable Item Description (DID) and the findings will be recorded on the Deliverable Acceptance Form (DAF).
7. If the Authority is unable to respond within twenty (20) Business Days, the Authority will notify the Contractor to continue work as planned and advise of a forecast date for the return of the Deliverable Acceptance Form (DAF); the impact shall be managed by the Authority and the Contractor, where this impacts on the Contractor's ability to achieve Acceptance of Deliverables and Milestone Reviews, this shall not delay any associated payments with the exception of any profit retentions.
8. Where the Authority does not notify the Contractor of a revised forecast date or does not Accept or Reject the Deliverable within twenty (20) days, in accordance with 7, the Deliverable shall be deemed Accepted.
9. All Payment relating to the relevant Deliverable shall be made in accordance with the Terms and Conditions of the Contract.

**Annex A – Deliverable Acceptance Form (DAF) for DIDs**

<b>DID Title</b>	
<b>DID No</b>	
<b>Version</b>	
<b>Date of Delivery</b>	
<b>Review Deadline</b>	
<b>Reviewed by:</b>	<i>List names of those who have reviewed Deliverable</i>
<b>Accepted/Rejected</b>	<i>Please detail if the Deliverable has been accepted or rejected based on whether the document conforms to the requirements within the relevant DID.</i>

Section/ Para No/ Reference	Comments	Reviewer
	Please note any specific non-conformances against the relevant DID	

**Schedule 09 – Statement of Requirement (SoR)**

CESTIUS: Phase 1

Statement of Requirement (SoR)

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## Section 1 – General Description

### 1.1 PYRAMID Introduction

1. PYRAMID is a Ministry of Defence (MOD) project that is designed to deliver a reconfigurable and reusable mission system architecture that will facilitate a ‘Families of Systems’ and ‘product line’ approach to UK air capability.
2. PYRAMID is delivering a reference functional architecture, supporting artefacts, components, and an enabling business model using Model-Based Systems Engineering (MBSE) and Open Architecture (OA) approaches.
3. PYRAMID recognises future air systems and upgrades to legacy systems as opportunities to deliver operational advantage; to reduce the time and cost of implementing through-life capability enhancements; and to increase international competitiveness and national credibility in advanced avionics solutions.
4. Sponsored by the RAF Rapid Capabilities Office (RCO), PYRAMID has been consistently supported by the Senior Responsible Owner (SRO) as critical to delivering adaptable air capability in accordance with the UK Combat Air Strategy.
5. The Single Statement of User Need (SSUN), inclusive of the Key User Requirements (KURs) for PYRAMID is:

*...to enable delivery and maintenance of United Kingdom Technology Advantage, the User requires a core mission system that is: inherently Resilient to Obsolescence; Scalable; Exploitable; Flight Certifiable; Security Accreditable; Configurable; provides Utility across a range of mission requirements; and incorporates Future Growth potential.*

(For detailed PYRAMID KURs, see Appendix A)

6. PYRAMID is realising its requirements through a series of complementary workstreams and governance activities. Each of these workstreams and activities, including CESTIUS, has been outlined in the following section.

### 1.2 PYRAMID Workstreams

7. TIKAL: Contracted to BAE Systems, TIKAL is the workstream within PYRAMID that is delivering the technical solution. The technical solution includes the reference functional architecture (known as the PYRAMID Reference Architecture), and a suite of supporting artefacts focusing on deployment and compliance (known as the PYRAMID Exploiter’s Pack).
8. CESTIUS: CESTIUS is the workstream within PYRAMID that is designed to provide concept-validation for the technical solution by measuring the usability and ‘openness’ of the PYRAMID Exploiter’s Pack. The exercise will consist of a development



‘experiment’ in which a PYRAMID component will be developed, and the lessons learned from the process will be captured and delivered to drive refinements to future versions of PYRAMID material.

9. Business Enterprise: Delivered by the Authority, Business Enterprise is the workstream that is delivering the enabling business model for PYRAMID and is designing and implementing a PYRAMID Support Environment (PSE). The PSE consists of both a digital environment used for accessing PYRAMID materials and the business processes that will support PYRAMID as an enterprise through-life.

## **Section 2 – CESTIUS**

### **2.1 CESTIUS Overview**

10. CESTIUS is the workstream within PYRAMID that is designed to provide concept-validation for the technical solution by measuring the usability and ‘openness’ of the PYRAMID Exploiter’s Pack.
11. The concept-validation exercise will consist of several activities, including developing a baseline component implementation using the PYRAMID Exploiter’s Pack, amending a baseline component implementation using information provided by a system integrator, and supporting the integration of a PYRAMID component into a target integration environment.
12. Each of these activities will be complemented by the capture and delivery of lessons learned that will be used to refine PYRAMID materials.

### **2.2 Technical Approach**

13. CESTIUS will be delivered across two (2) overlapping phases, which will be known as ‘Phase 1 – Component Development and Feedback’ (hereafter referred to as Phase 1) and ‘Phase 2 – Component Integration and Feedback’ (hereafter referred to as Phase 2).
14. Phase 1 will comprise three (3) sequential subphases, which will be known as ‘Phase 1A’, ‘Phase 1B’, and ‘Phase 1C’.
  - a. Phase 1A will consist of the development of a baseline component implementation using the PYRAMID Exploiter’s Pack.
  - b. Phase 1B will consist of updating the baseline component implementation using information on the target integration environment and its impact on a component, provided by a system integrator, to produce an amended component implementation.
  - c. Phase 1C will consist of the provision of support to the system integrator to enable

the delivery of Phase 2.

d. Lessons learned capture from the experience of delivering Phase 1A and Phase 1B will be delivered to the Authority to support the refinement of PYRAMID materials.

15. Phase 2 will consist of the integration of the amended baseline component produced in Phase 1B into a target integration environment. Lessons learned from the experience of integration will be captured and delivered to the Authority to drive refinements to the PYRAMID materials.

16. This Statement of Requirement (SOR) is for Phase 1, inclusive of Phase 1A, Phase 1B, and Phase 1C. Each of these subphases will be delivered by the Contractor.

17. The activities described in association with Phase 2 is assumed to be delivered by BAE Systems under existing PYRAMID workstreams.

18. Further information on the technical approach to Phase 1 is detailed below:

#### **2.2.1 Phase 1A**

19. During Phase 1A, the Contractor will develop a baseline component implementation using the PYRAMID Exploiter's Pack as a foundation for an offering into a future aircraft programme.

20. The component should be as mature as is reasonably possible within the development timeframe to minimize the effort required to modify and enhance the baseline component implementation to meet specific aircraft requirements.

21. The Contractor shall have the option to develop one (1) of the following candidate components, for which the supporting information is contained within the PYRAMID Exploiter's Pack:

a. Interlocks – This component prevents functions from being activated, based on a simple set of rules. If activated at the incorrect time, the functions could cause accidents with a severity rating of up to, and including, catastrophic. For example, an interlocks component would exist within the weapons-release chain to determine whether interlocks are active or inactive to support weapon-release.

b. Time Determination – This component is used to provide absolute and relative time from the system from a time-source.

c. Sensors (GPS/Temperature/LINS/Pressure) – This component is used to interface directly with the sensors and output the sensed data. Each type of sensor has a

specific instance of sensors defined.

22. The Contractor will develop and deliver the baseline component to the Authority and version 1 of a 'Lessons Learned Report' that captures the experience of developing a PYRAMID component to understand the usability of the PYRAMID Exploiter's Pack.
23. The Contractor is expected to use both their own expertise and the guidance provided in the PYRAMID materials to develop the baseline component implementation.

#### **2.2.2 Phase 1B**

24. Once the baseline component has been developed and delivered to the Authority with version 1 of a 'Lessons Learned Report', the Contractor will be required to mature the component using information on the target integration environment and its impact on the component, provided by the system integrator. The amended component will meet a more-detailed requirement for a specific aircraft mission system.
25. The Contractor will supply the amended component to the system integrator, following acceptance by the Authority, to enable the effective delivery of Phase 2.
26. The Contractor will complement the delivery of the amended component with version 2 of a 'Lessons Learned Report', supplied to the Authority, that captures the experience of the process, including the deltas between the maturity achieved using the PYRAMID Exploiter's Pack and the additional information provided by the system integrator.
27. The Contractor is expected to use both their own expertise and the methods identified in the PYRAMID materials to simplify the process of modification and enhancement of the baseline component using extensions and data-driving.

#### **2.2.3 Phase 1C**

28. Following the completion of Phase 1B, the Contractor is required to provide support to the system integrator to enable the successful delivery of Phase 2.
29. The Contractor will be required to supply the developed PYRAMID component, support technical and management engagements, as well as provide technical information to the system integrator.
30. Expected areas that will be required to be discussed with the system integrator will include, as a minimum:

- a. Interfaces

- b. Target Environment
- c. Supporting Information Packs and Format
- d. Timescales of Component Delivery to the System Integrator

## **2.3 Requirement**

31. The requirement for CESTIUS is captured under the headings below. These headings are aligned with the expected work packages for Phase 1 but are not intended to direct or constrain the organisation of the delivery of the requirement.

32. The Contractor is required to provide a Statement of Work (SOW) that addresses:

- a. WP1 – Project Management
- b. WP2 – Development of PYRAMID Component(s)
- c. WP3 – Development of Lessons Learned Report(s)
- d. WP4 – Support to System Integration

33. Further information on each of these expected work packages is outlined in the sections below and detailed in 'Section 3 – Detailed Requirements'.

### **2.3.1 WP1 – Project Management**

34. The Contractor shall plan, coordinate, and manage all aspects of the Contract, including the administration of any identified Sub-Contractors;

35. The Contractor shall provide early indication to the Authority of problems encountered and their resolution activities to reduce risks to Performance, Time, and Cost parameters;

36. The Contractor shall propose processes to coordinate, manage, and administer all aspects of the Contract and provide details of those processes.

37. The Contractor is responsible for updating and maintaining the following artefacts: Project Schedule, Project Progress Reports, Project Management Plan, and a Risk and Opportunities Register.

38. Further information on each of these areas is outlined in the sections below and detailed in 'Section 3 – Detailed Requirements'.

### **2.3.2 WP2 – Development of PYRAMID Component(s)**

39. The Contractor shall develop and deliver a baseline component implementation using the PYRAMID Exploiter's Pack that addresses one (1) of the following candidates: Interlocks, Time Determination, or Sensors.
40. The baseline component shall be a component developed to meet the definition in the PYRAMID Exploiter's Pack, complete with a compliance statement, but is intended to be tailored to an aircraft-specific programme in the future.
41. The Contractor shall develop and deliver an amended component using information on the target integration environment and its impact on the component, provided by the system integrator.
42. The amended component is a component developed to meet the definition in the PYRAMID Exploiter's Pack, complete with a compliance statement, but has been refined in response to the information provided by the system integrator.
43. The Contractor will be supplied with the relevant information and tools, where appropriate, to be able to build software for the system integrator's target system.

### **2.3.3 WP3 – Development of Lessons Learned Report(s)**

44. The Contractor shall provide version 1 of a 'Lessons Learned Report' at the completion of Phase 1A that captures lessons learned from the experience of using the PYRAMID Exploiter's Pack to develop a baseline component implementation.
45. The following is a non-exhaustive list of areas of interest to the Authority for version 1 of the 'Lessons Learned Report' produced during Phase 1A. These shall be considered alongside the detailed requirements in 'Section 3 – Detailed Requirements' and are not intended to constrain the delivery of the requirement.
- a. Details of the skills which a Contractor may be required to possess to be able to use PYRAMID materials, focusing on those that cannot be considered 'business-as-usual';
  - b. Details of any challenges with the reference information provided in the PYRAMID materials;

c. Details on the ability to use PYRAMID within the Contractor's standard development processes;

d. Details on any ambiguities within the PYRAMID materials and potential solutions to those ambiguities;

e. Details on the perceived clarity of the PYRAMID materials in terms of where it applies within the development process;

f. Details of any tools, processes, and facilities which are discovered to be essential to the development of PYRAMID, focusing on those that cannot be considered as 'business-as-usual';

g. Details on the ability to understand and meet the safety guidelines and processes;

h. Details on the ability to understand and meet the security guidelines and processes.

i. Details on the ability to capture system requirements from the PYRAMID Exploiter's Pack;

j. Details on the ability to define a system boundary for development;

k. Details on the ability to derive system requirements from the PYRAMID KURs;

l. Details on the ability to derive system requirements from the policies;

m. Details on the ability to derive system requirements from the component description;

n. Details on the ability to perform a safety analysis in the absence of a defined aircraft programme;

o. Details on the ability to perform a security analysis in the absence of a defined aircraft programme;

p. Details on the ability to move from system requirements into model-based systems engineering;

q. Details on the ability to generate a Platform-Independent Model;

- r. The ability to develop software requirements;
  - s. The ability to define a software execution platform enough for development of a baseline component implementation;
  - t. Details on the ability to develop software source code for a functional baseline implementation of a component;
  - u. Details on the ability to create lifecycle artefacts for safety, security, compliance, and maintainability.
46. The Contractor shall provide version 2 of a 'Lessons Learned Report' at the completion of Phase 1B that captures the lessons learned from the experience of updating the baseline component implementation using the information on the target integration environment and its impacts on the component.
47. The following is a non-exhaustive list of areas of interest to the Authority for version 2 of the 'Lessons Learned Report' produced during Phase 1B. These should be considered alongside the detailed requirements in 'Section 3 – Detailed Requirements' and are not intended to constrain the delivery of the requirement.
- a. Details on the complexity of an aircraft-specific component specification, including the complexity of any common aspects, such as software execution platform details, the complexity of component-specific aspects, such as aircraft-specific requirements, and the suitability of the component specification as a contractual document;
  - b. Details on the ability to define and agree the level of verification and validation achievable prior to passing the component onto a system integrator, including the ability to meet time constraints, the ability to manage intellectual property rights through technical and commercial methods, the usability of Model-Based Systems Engineering between the component developer and the system integrator, and the usability of Model-Based Software Engineering between the component developer and system integrator;
  - c. Details on the management of risks throughout the development process, such as mitigation identification, including the risk of failure to demonstrate PYRAMID-Compliance, the risk of functional requirements not being addressed by the component, and the risk of non-functional requirements not being met by the component supplier;
  - d. Details on the challenges of collectively safety lifecycle evidence, including the complexity of capturing full DO-178C lifecycle evidence between the component supplier and system integrator (e.g. target testing), and the complexity of providing material to the system integrator for inclusion into a modular safety case;
  - e. Details on the challenges of collecting evidence to meet security requirements;

f. Details on the ability to generate a Platform-Specific Model;

g. Details on the ability to meet software dependencies on hardware, on the operating system, on the execution timing analysis, on the access to configuration data, on the ability to perform system testing before normal operation, and on the ability to log issues and meet health management;

h. Details on any areas produced for version 1 of a 'Lessons Learned Report' that require update and reconsideration during Phase 1B.

48. The Contractor should deliver version 2 of a 'Lessons Learned Report' as an update to Version 1 so that the experience of Phase 1A and Phase 1B is contained within a Single Source of the Truth (SSOT).

#### **2.3.4 WP4 – Support to System Integration**

49. The Contractor is required to support the system integrator to enable the effective delivery of CESTIUS Phase 2, including through the provision of relevant technical information, relevant insight into the lessons learned from the experience of supporting system integration, and providing support to engagements with the system integrator.

50. The Contractor is required to discuss several management and technical areas with the system integrator throughout Phase 1C, including, as a minimum:

a. Interfaces

b. Target Environment

c. Supporting Information Packs and Format

d. Timescales of Component Delivery to the System Integrator

#### **2.4 Project Schedule**

51. The Contractor is required to provide a detailed, resourced, Level 0 Project Schedule which includes all activities, interdependencies, milestones, and supporting activities necessary to deliver the requirement against the delivery schedule as part of the Statement of Work (SOW).

52. The Contractor shall produce and maintain a resourced Project Schedule which shall



be issued monthly by working day 5 to the Authority, detailing any changes to the Schedule, and shall be issued in a MS Project or Primavera P6 format including a narrative to explain any variances. The Project Schedule shall detail all activities anticipated from Contract Award. The Authority requires the ability to monitor progress and identify milestones, resources, and dependencies, as described.

53. The Authority has provided an indicative schedule containing approximate delivery periods and assumed start and finish dates for CESTIUS to inform the development of the Statement of Work (SOW).

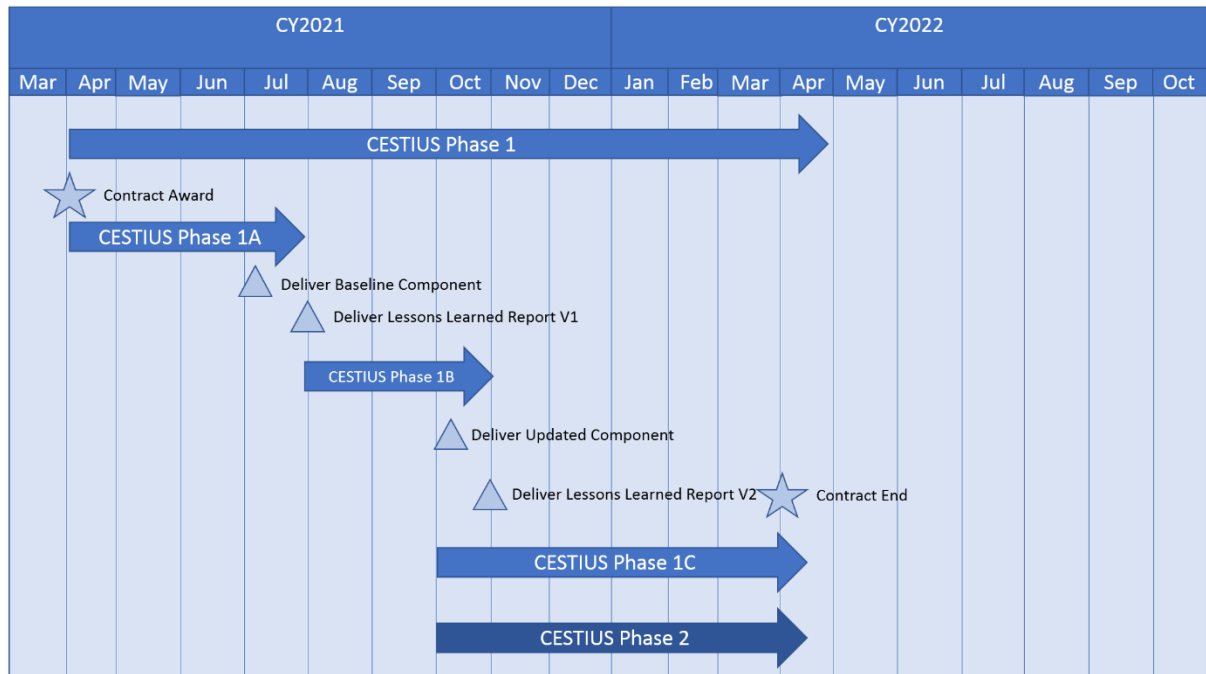


Figure 1: Indicative Schedule for CESTIUS

54. Phase 1 is assumed to commence in April 2021 and complete in April 2022, with an approximate thirteen (13) month Period of Performance:

- a. Phase 1A is assumed to start in April 2021 and complete in July 2021.
- b. Phase 1B is assumed to start in July 2021 and complete in October 2021.
- c. Phase 1C is assumed to start in October 2021 and complete in April 2022.

55. Phase 1C is assumed to commence in October 2021 and complete in April 2022, with an approximate six (6) month Period of Performance.

## 2.5 Project Progress Reporting

56. The Contractor shall invite Authority representation at all Project Management Meetings, providing not less than ten (10) working days' notice, in accordance with the meeting activities listed in Appendix C to this Statement of Requirement (SOR).
57. The frequency of these Project Management Meetings may vary as the Contract progresses.
58. The meeting agenda will be submitted by the Contractor no less than one week prior to the meeting and will cover, as a minimum, the following topics:
- a. Project Schedule;
  - b. Contract Performance Review;
  - c. Supply Chain Activities;
  - d. Risk and Opportunities Register and RACI;
  - e. Quality Management Issues;
  - f. Review of Previous Actions
59. Project Management Meeting minutes shall be produced by the Contractor and submitted for Authority agreement within one (1) calendar week of the meeting taking place.
60. The Contractor shall attend Technical Interchange Meetings (TIMs), in accordance with the meeting activities listed in Appendix C to this Statement of Requirement (SOR).
61. The Contractor shall provide, via email, fortnightly Project Schedule and Progress Reports to the CESTIUS Project Manager to enable the Authority to maintain current knowledge of the project progress between Project Management Meetings. The Progress Reports shall detail the Contractor's progress and planned activity against each of the Contract's deliverables as listed below:
- a. Project Schedule (Microsoft Project or Primavera P6);
  - b. Project Risk, Issues, and Opportunities;
  - c. Technical Progress;

- d. Financial Information;
  - e. Completion State of Proposed Work;
  - f. Metrics for Assessment of Progress Against Work Packages;
  - g. Forthcoming Meetings and Events
62. Extraordinary Progress Reports are to be raised by the Contractor if an issue or risk arises that will affect any aspect of project delivery prior to the due date of the next Progress Report.
63. The Contractor shall submit reports in accordance with the reporting schedule at Appendix D.
64. Project Management support of the above points shall be ongoing throughout the duration of the Contract.

## **2.6 Project Management Plan**

65. The Contractor shall provide a Project Management Plan (PMP) that includes a detailed, resourced, Project Schedule which indicates all the activities, interdependencies, milestones, and supporting activities necessary to deliver the project against the delivery schedule throughout the Period of Performance. The Project Management Plan shall be delivered in Microsoft Word and the Schedule contained within the PMP shall be in Microsoft Project format.
66. The Contractor shall provide and maintain, as part of the Project Management Plan, a list that identifies the Contractor's project management team, who shall have the appropriate project management qualifications, competences, and any necessary security clearances to discharge effectively their obligations in the Contract. The Contractor shall clearly identify where an individual undertakes more than one of the Contractor's project management team roles so that stove-pipes can be understood.

## **2.7 Risk Management**

67. The Contractor shall plan and manage risks and is required to generate and maintain project risk documentation for the duration of the Period of Performance.

68. The Contractor shall maintain a Risk and Opportunities Register that shall describe how the Contractor will identify, record, and manage risks, issues, and opportunities in a structured and timely manner to ensure that risks are mitigated to 'As Low As Reasonably Practicable' (ALARP), issues are addressed, and agreed opportunities are exploited. The Authority requires visibility of all project risks and issues and their progress throughout the project.
69. The Risk and Opportunities Register shall contain the following, as a minimum, for each risk or issue:
- a. Identification Number – Unique identifier;
  - b. Owner – Person responsible for the risk or issue once it has been identified;
  - c. Description – Narrative description of the risk or opportunity event, including any causes and potential impacts;
  - d. Risk Assessment – Level of risk by probability % and impact, (quantified in terms of time, cost or performance), including an assessment of pre- and post-mitigation levels;
  - e. Action – Action(s) that must be, or have been, taken to mitigate the risk;
  - f. Status – Open/Closed and most-recent updated comments.

## **2.8 Quality Management**

70. The Contractor shall hold a Quality Management System (QMS) certified to ISO 9001:2015, as a minimum, in addition to being certified against AS9100 for the duration of the Contract, with the appropriate scope to deliver the Contract requirements, issued by a Nationally Accredited Certification Body.
71. The Contractor shall provide a copy of their Quality Management System certification and shall immediately inform the Authority of any amendments, or if it is revoked or suspended with immediate effect.
72. The Contractor shall ensure that all Articles undertaken in support of this requirement are carried out in accordance with the Quality Standards detailed in the Terms and Conditions to the Contract.

### Section 3 – Detailed Requirements

#### Work Package 1: Project Management

ID	Description	Deliverable/Output
1.1	The Contractor shall plan, coordinate, and manage all aspects of the Contract including the administration of any identified Sub-Contractors.	
1.2	The Contractor shall propose processes to coordinate, manage, and administer all aspects of the Contractor and provide details of those processes in the Statement of Work (SOW).	Statement of Work
1.3	The Contractor shall provide a Project Management Plan (PMP) in the Statement of Work (SOW) that includes a detailed, resourced, Level 0 Project Schedule which indicates all the activities, interdependencies throughout the Period of Performance. The Project Management Plan shall be delivered in Microsoft Word format and the schedule contained within the PMP artefacts shall be delivered in Microsoft Project (.mpp) format.	Project Management Plan/Project Schedule
1.4	The Contractor shall specify GFX requirements in the Statement of Work, detailing which artefacts are required, when they are required, the priority of each artefact, and the plans for the return or disposal of each artefact, including any resource requirements or exchange. The GFX List shall be agreed with the Customer. The Contractor shall manage requests to the MOD for technical support and the provision of GFX in a timely manner.	GFX List
1.5	The Project Management Plan (PMP) should be reviewed throughout the Period of Performance to ensure relevance and accuracy. Reviews of the PMP should occur at the completion of Phase 1A and Phase 1B. If there are changes required to the PMP, an updated version of the artefacts should be provided to the Authority in Microsoft Office formats. The PMP shall be delivered in Microsoft Word format and the schedule contained within the PMP shall be delivered in Microsoft Project format.	Project Management Plan Updates
1.6	The Contractor shall submit to the Customer for written approval, prior to implementation, all changes to the Project Management Plan that the Contractor may propose.	Project Management Plan Update Approval
1.7	The Contractor shall provide and maintain, as part of the Project Management Plan (PMP), a list that identifies the Contractor's project management team, who shall have the appropriate project management qualifications, competences, and any necessary security clearances to discharge effectively their obligations in the Contract. The Contractor shall clearly identify where an individual undertakes more than one of the Contractor's project management team roles so that stove-pipes can be understood.	Organisational Chart
1.8	The Contractor is required to provide and maintain throughout	Project Schedule

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	the Period of Performance a detailed, resourced, Level 0 Project Schedule which includes all activities, interdependencies, milestones, and supporting activities necessary to deliver the requirement against the delivery schedule as part of the Statement of Work (SOW). The Project Schedule should be provided in either Microsoft Project format (.mpp) or Primavera P6 (.xer).	
1.9	The Contractor shall propose arrangements to enable regular engagements with the appropriate representatives of the Authority, including the CESTIUS Project Manager and the CESTIUS Technical Lead.	Communication Plan
1.10	The Contractor shall propose the mechanisms to be used to support remote engagement at UK OFFICIAL-SENSITIVE, to be limited to either: Microsoft Teams or Skype for Business. The mechanisms will be agreed with the Authority.	Remote Engagement Plan
1.11	The Contractor shall attend monthly Project Management Meetings with the Authority. The Contractor shall invite Authority representation to all Project Management Meetings, providing not less than ten (10) working days' notice, in accordance with the meeting activities listed in Appendix C to this Statement of Requirement (SOR).	Project Management Meetings
1.12	The Contractor shall, for all meetings, issue an agenda and meeting material no less than one (1) calendar week prior to the meeting. The agenda will cover, as a minimum, the following topics: Project Schedule, Contract Performance Review, Supply Chain Activities, Risk and Opportunities Register and RACI, Quality Management Issues, and Review of previous actions. The Contractor shall provide notes, minutes, actions, and presentation material within one (1) calendar week after the meeting taking place.	Review Materials
1.13	The Contractor shall provide the Customer with appropriate data to support value judgements against the budget spent and other financial information requested. Financial information should be provided in accordance with DEFCON 605 and DEFCON 647.	Financial Data
1.14	The Contractor shall manage the project milestones and events to present an appropriate and comprehensive review of the project technical maturity and project management status.	Reviews of Technical Maturity
1.15	The Contractor shall provide fortnightly Progress Reports to the CESTIUS Project Manager to enable the Authority to maintain current knowledge of the project progress between Project Management Meetings. The Progress Reports shall detail the Contractor's progress and planned activity against each of the Contract's deliverables as well as the following artefacts: Project Schedule (PDF Version), Project Risk and Issues (PDF Version), Technical Progress, Financial Information, Completion Status of Proposed Work, and Metrics for Assessment of Progress Against Work Packages.	Progress Reports
1.16	The Contractor shall be required to provide Extraordinary Progress Reports should an issue or risk arise that will affect any aspect of project delivery prior to the due date of the next	Extraordinary Progress Reports

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	Progress Report.	
1.17	The Contractor shall provide monthly Project Schedule updates, prior to Working Day 5, to the CESTIUS Project Manager throughout the Period of Performance to enable the Authority to maintain current knowledge of the project progress between Project Management Meetings. The updates to the Project Schedule contained within the Progress Reports should be provided in PDF (.pdf) format.	Project Schedule Updates
1.18	The Contractor shall attend monthly Technical Interchange Meetings with the Authority. The Contractor shall invite Authority representation to all Technical Interchange Meetings occurring during Phase 1 A and Authority and System Integrator representation to all Technical Interchange Meetings occurring during Phase 1B, providing not less than ten (10) working days' notice, in accordance with the meeting activities listed in Appendix C to the Statement of Requirement.	Technical Interchange Meetings
1.19	The Contractor shall support technical exchanges and the passage of information between the Contractor and other PYRAMID activities, such as TIKAL, by presenting material in an agreed format and with the appropriate intellectual property right conditions and, where possible, enabling exchange through adjusting materials to support common software tools.	Support to Information Exchange
1.20	The Contractor shall plan and manage risks and is required to generate and maintain project risk documentation for the duration of the Contract. The Contractor shall maintain a Risk and Opportunities Register that shall describe how the Contractor will identify, record, and manage risks, issues, and opportunities in a structured and timely manner to ensure that risks are mitigated to 'As Low as Reasonably Practicable', issues are addressed, and agreed opportunities are exploited. The Risk and Opportunities Register shall contain, as a minimum: ID Number, Owner, Description including Cause and Consequences, Risk Assessment, including Pre- and Post-Mitigation Assessment, Impact, quantified in terms of Performance, Cost, and Time, Action, and Status. The Risk and Opportunities Register can be managed by the Contractor's internal systems and corresponding file formats, providing that copies and updates to risks and issues can be provided to the Authority in either Excel, Word, or PDF format, or as agreed with the Authority.	Risk and Opportunities Register
1.21	The Contractor shall provide monthly updates to risks, issues, and opportunities, to the Authority prior to Working Day 5, in either Excel, Word, or PDF format, or as agreed with the Authority.	Risk and Opportunities Register Updates
1.22	The Contractor shall provide monthly updates to risks, issues, and opportunities in accordance with Requirement 1.11-1.12 in either Excel, Word, PowerPoint, or PDF format, or as agreed with the Authority.	Risk and Opportunities Register Updates
1.23	The Contractor shall provide early indication to the Authority of any problems or issues encountered in the Period of	Risk and Opportunities

	Performance.	Register Updates
1.24	The Contractor shall put into place an efficient and effective method for capturing metrics and report on them during each management meeting to review progress, maturity, and address the progress of the proposed work against the Contract.	Metrics
1.25	The Contractor shall hold a Quality Management System (QMS) certified to ISO 9001:2015, as a minimum, in addition to being certified against AS9100 for the duration of the Contract with the appropriate scope to deliver the Contract requirements, issued by a Nationally Accredited Certification Body.	Certified QMS
1.26	The Contractor shall provide a copy of their Quality Management System Certification and shall immediately inform the Authority of any amendments, or if it is revoked or suspended, with immediate effect.	QMS Certification

### **Work Package 2: Component Development**

ID	Description	Deliverable/Output
2.1	The Contractor shall develop a baseline PYRAMID-Compliant software component using the PYRAMID Exploiter's Pack (Version 2).	Baseline Component
2.2	The Contractor shall develop a baseline PYRAMID-Compliant component that satisfies one of the following functional requirements: 1) Interlocks, 2) Time Determination, or 3) Sensors.	
2.3	The Contractor shall update a baseline PYRAMID-Compliant software component using a GFX Component Specification provided by a System Integrator, describing the target integration environment.	Amended Component
2.4	The Contractor shall produce a statement of compliance to PYRAMID, consistent with the guidance on compliance contained within the PYRAMID Exploiter's Pack.	Compliance Statement
2.5	The Contractor shall identify the development artefacts that will be developed from the development process.	
2.6	The contractor's development artefacts shall be sufficiently representative to engage in discussions with the Customer around safety certifiability of the component.	
2.7	The contractor's development artefacts shall be sufficiently representative to engage in discussions with the Customer around security accreditation of the component.	
2.8	The contractor's development artefacts shall be sufficiently representative to engage in discussions with the Customer around maintainability of the component.	
2.9	The contractor's development artefacts shall be sufficiently representative to engage in discussions with the Customer	



	around documentation of the component capability, compliance and licensing terms for the purposes of a listing in a component library established by the PYRAMID Enterprise Management Agency	
2.10	The Contractor shall identify review-points in the development lifecycle, consistent with Work Package 1: Project Management, so that the Customer can establish appropriate attendance of subject matter experts from the Authority and the PYRAMID stakeholders.	
2.11	The Contractor shall engage with the DE&S Airworthiness and Security authorities, to provide example design assurance sufficient to explore the topic and generate confidence that in the future, the software developed would be capable of meeting an acceptable means of compliance, including a consideration of the impact of cyber vulnerabilities on airworthiness. DO-178C (Software Considerations in Airborne Systems and Equipment Certification), and supplements, including DO-326A, are expected unless the Customer agrees to another means of compliance. These engagements shall be supported by a robust, documented, and auditable safety and security assessment for the component.	Design Assurance  Safety and Assurance Assessment
2.12	The Contractor shall include the Customer in any requests for support from PYRAMID to ensure visibility of any engagements between the Contractor and any additional stakeholders required to support development.	
2.13	The Contractor shall be required to host a Customer Acceptance Event at the point of delivery for both the baseline component implementation and the amended component implementation to support acceptance of the Deliverables. The Authority reserves the right to invite a representative of the system integrator to the acceptance event.	

### **Work Package 3: Lessons Learned Report**

ID	Description	Deliverable/Output
	General	
3.1	The Contractor shall develop a Lessons Learned Report, in Microsoft Word format, that contains lessons learned from the experience of using the PYRAMID Exploiter's Pack to develop a PYRAMID-Compliant software component. The report should contain, as a minimum, feedback on the clarity and completeness of the roles and responsibilities of the identified software component; the design rationale for the identified software component; the definitions of PYRAMID compliance; the glossary and taxonomy; the policies and interaction views;	Lessons Learned Report

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	the hierarchy of control for a PYRAMID system; the philosophy for hardware abstraction; and safety and security accreditation.	
3.2	The Contractor shall ensure that the Lessons Learned Report contains both a narrative summary of the Results and recommended changes expressed as formal requirements against each relevant narrative statement.	
3.3	The Contractor shall provide an explanation of the methods that will be used to capture experiences, lessons learned, and feedback that emerges from the activities in a structured manner.	
3.4	The Contractor shall capture experiences, lessons learned, and feedback in a format that enables the exchange of information with other PYRAMID Contracts, such as TIKAL. The format, considerate of intellectual property and security, shall be agreed with the Customer.	
3.5	The Contractor shall consider the method for capture of 'openness' and usability feedback. The Contractor shall, as a minimum, detail how they will provide objective and subjective measures of usability and 'openness' of the technical solution. The development of the component should be considered as an experiment, with appropriate experiment design included in the method for the undertaking of the activity.	
3.6	The Contractor shall include a definition of the process that will be followed to capture feedback and how the Contractor will ensure the feedback covers objective and subjective feedback; how the Contractor will manage cognitive biases and other forms of bias, such as anchoring and confirmation, which have the potential to distort feedback; and dependencies the Contractor will have on the Customer to assist in the capture of feedback.	
3.7	The Contractor shall consider the management of risks specific to the use of PYRAMID and provide feedback on mitigations that could be achieved through the development of additional guidance or amendments to the PYRAMID approach. The Contractor shall consider areas including, but not limited to, an assessment of the usability of the compliance guide; and the potential to meet both functional and non-functional requirements during integration.	
3.8	The Contractor shall consider the ability to use the provided material to define the activity. The Contractor shall use the latest material provided as the input to their development processes, which will be the PYRAMID Exploiter's Pack.	
	<b>Systems Engineering</b>	
3.9	The Contractor shall consider the ability to define a system boundary for the development. The Contractor shall, as a minimum, provide feedback on the challenges and issues associated with defining a system boundary for the component, as correct identification of the role and responsibility is a fundamental element of PYRAMID and	

	critical to determining compliance.	
3.10	The Contractor shall consider the ability to capture system requirements from the PYRAMID Exploiter's Pack. The Contractor shall, as a minimum, develop a set of system requirements for one of the components identified as suitable for development using Model-Based Systems Engineering.	
3.11	The Contractor shall consider the ability to derive system requirements from the PYRAMID KURs. The Contractor shall, as a minimum, provide feedback on the challenges and issues associated with identifying any appropriate system requirements on the component derived from the KURs identified in the PYRAMID materials.	
3.12	The Contractor shall consider the ability to derive System Requirements from the Policies. The Contractor shall, as a minimum, provide feedback on the challenges/issues associated with identifying any appropriate System Requirements on the component derived from the Architecture Policies identified in the PYRAMID material.	
3.13	The Contractor shall consider the ability to derive System Requirements from the component description. The Contractor shall, as a minimum, provide feedback on the challenges/issues associated with identifying any appropriate System Requirements on the component sourced from the component description and related example Interaction Views identified in the PYRAMID material.	
3.14	The Contractor shall consider the ability to undertake safety analysis in the absence of a defined aircraft programme and use their experience to identify likely safety hazards to feed into the systems engineering process applicable to the identified component. The Contractor shall report on the challenges experienced, and expected, in the consideration of safety analysis in the understanding that typical processes to identify and flow-down hazards cannot be followed.	
3.15	The Contractor shall consider the ability to undertake security analysis in the absence of a defined aircraft programme and use their experience to identify likely security threats to feed into the systems engineering process applicable to the identified component. The Contractor shall report on the challenges experienced, and expected, in the consideration of security analysis in the understanding that typical processes cannot be followed.	
3.16	The Contractor shall consider the ability to undertake model-based systems engineering, including, but not limited to, the challenges surrounding the adoption of a model-based systems engineering approach to the exploitation of PYRAMID. This should consider the full-scope of model-based design, including potential future interactions with a system integrator that may wish to have access to aspects of the model-based systems engineering models but may be using a differing toolset.	

3.17	The Contractor shall consider the ability to produce a Platform-Independent Model, including, but not limited to, the challenges surrounding the definition of a Platform-Independent Model; and maintaining separation between the systems and software aspects to remain in accordance with DO-178C and DO-331.	
3.18	The Contractor shall consider the ability to generate a Platform-Specific Model, including, but not limited to, the challenges surrounding the movement from Platform-Independent to Platform-Specific modelling in the absence of a specified aircraft programme; and the number of assumptions that are required to develop a baseline component with wide applicability to aircraft programmes.	
	<b>Software Engineering</b>	
3.19	The Contractor shall consider the ability to develop software requirements, including, but not limited to, the challenges surrounding the transition from system requirements to software requirements and any related assumptions on hardware requirements; and dependencies on the software execution environment that needs to be made to support the architecture and design of a baseline PYRAMID component.	
3.20	The Contractor shall consider the ability to move to Model-Based Software Engineering and the experience of moving into Model Based System Engineering while enabling that the models are developed in accordance with DO-331.	
3.21	The Contractor shall consider the ability to define a software execution platform for the development of a baseline implementation of PYRAMID, including, but not limited to, the experience of determining how a baseline PYRAMID component can be hosted despite a lack of specification of software execution architecture within PYRAMID; and the processes by which a component can be ported to different execution environments while meeting the safety and security dependencies which may have been identified by systems engineering processes.	
3.22	The Contractor shall consider the ability to meet software dependencies on hardware (while following the policies on interacting with equipment), including, but not limited to, the challenges and approaches that can be used to decouple the hardware interaction dependencies from the application elements of the baseline component where software requires access to hardware.	
3.23	<p>The Contractor shall consider the ability to meet software dependencies on an operating system and/or language run-time:</p> <p>-</p> <p>If an operating system is used, the Contractor shall provide feedback on the challenges surrounding the adoption of PYRAMID, including, but not limited to; the degree to which an operating system requires separation between the application and device driver, resulting in a</p>	

	<p>new interface requirement; and how this might impact PYRAMID where there is no standardisation of a real-time operating system.</p> <p>- If an operating system is not used, the Contractor shall provide feedback on the process by which an external (provided) interface is accessed by other components; the necessity for a system integrator to implement bridges that run such that they do not require an Operating System or Middleware and may need to be combined with the component as a single executable; and what implications there would be on the relationship between the component supplier and the system integrator.</p>	
3.24	<p>The Contractor shall consider the ability to meet software dependencies on execution timing analysis, including, but not limited to, the impact on typical approaches to handling temporal requirements in a PYRAMID approach; where timing requirements may exist on responses from a service call which would require another component to respond to meet the initiating service call; the impact on the implementation decisions to move away from service-oriented architecture; how far an execution timing analysis can go on a baseline component implementation compared to a specific aircraft programme; and the expectations on the system integrator in terms of how timing requirements would be managed.</p>	
3.25	<p>The Contractor shall provide feedback on the reality of data-driven design, including, but not limited to, the potential impact on the scope of testing required for functionality which can be significantly changed by a change of the configuration data; feedback on potential temporal requirements on access to data, should it be required for calculations at run-time, or for configuration after a restart; and access to configuration data in the understanding of data-driven components as a key principle to PYRAMID.</p>	
3.26	<p>The Contractor shall consider the ability for the software to perform any required initialisation system testing prior to normal operation and provide feedback on the ability to interpret how a component (especially a resource component that accesses hardware) would test and report system health during start-up; and in the absence of a specific aircraft project to provide project-specific system health implementation which complies with PYRAMID policies.</p>	
3.27	<p>The Contractor shall consider the ability to log issues and meet health management, including but not limited to, the challenges surrounding the design of software to be able to log issues which may arise during operations in a method that is consistent with PYRAMID policies e.g. health management, capability assessment and test.</p>	
3.28	<p>The Contractor shall consider the ability to create lifecycle</p>	

	artefacts for safety, including, but not limited to, the safety process in terms of the ability to capture artefacts to support a DO-178C lifecycle for the software and the aspects of the lifecycle would require working with the system integrator when completing the 'porting' to the identified processing hardware.	
3.29	The Contractor shall consider the ability to create lifecycle artefacts for security and security processes in terms of the potential to be independently completed by a system integrator.	
3.30	The Contractor shall consider the ability to create lifecycle artefacts for compliance and provide feedback on the compliance approach, as captured in the PYRAMID materials, including, but not limited to, the commercial impacts as well as the procedural and technical aspects of when compliance activities should be considered in a development lifecycle.	
3.31	The Contractor shall consider the ability to create lifecycle artefacts for maintainability and the impact of PYRAMID on different needs on the development of materials to support the maintainability of software components.	
<b>Transition to Aircraft-Specific Implementation</b>		
3.32	The Contractor shall consider the complexity of an aircraft-specific component specification and provide feedback on the usability of the component specification and its complexity in comparison to the information contained within the PYRAMID Exploiter's Pack. Focus areas for the comparison should include, but not be limited to, the complexity and usability of common material which is applicable to all components for the mission system; complexity and usability of component-specific requirements for the specific aircraft; and the suitability of the component specification as a contract document.	
3.33	The Contractor shall consider the challenges surrounding a security accreditation process when moving from a baseline component to meeting an aircraft-specific component specification and provide feedback on the application of security processes.	
3.34	The Contractor shall consider the challenges surrounding a safety certification process when moving from a baseline component to meeting an aircraft-specific component specification and provide feedback on the application of safety processes.	
3.35	The Contractor shall consider the ability to define and agree the level of verification and validation achievable by the contractor before passing the component to the system integrator. The Contractor shall consider areas including, but not limited to, the verification of temporal requirements; the protection of intellectual property rights when transferring software components to the system integrator; the level of involvement of a system integrator in the development	

	lifecycle; and the experience of working with the system integrator with a model-based systems engineering approach.	
3.36	The Contractor shall consider the risks that requirements may not be met when the component is integrated by a system integrator and provide feedback on the risks and potential mitigations.	

#### Work Package 4: Support to System Integration

ID	Description	Deliverable/Output
4.1	The Contractor will be required to support the integration activities occurring under 'Phase 2 – Component Integration and Feedback'.	
4.2	The Contractor shall support technical exchanges and the passage of information between the Contract and the system integrator by presenting material in an agreed format with the appropriate intellectual property right conditions and, where possible, enabling exchanges through common software tools.	
4.3	The Contractor shall support technical exchanges and the passage of information between the Contract and the system integrator by attending and contributing to engagements with the system integrator. The number and frequency will be agreed with the Customer.	
4.4	The Contractor shall provide to the system integrator evidence that the implementation of the component meets the specification provided on the target integration environment.	
4.5	The Contractor shall re-compile their software, as required by the system integrator, to produce executable code for the system integrator's target system.	
4.6	The Contractor shall provide to the system integrator a detailed specification of the component-provided service interface to enable PYRAMID 'bridge' software to be developed to integrate the component with the system, unless detailed in the component specification.	
4.7	The Contractor is required to discuss and agree an approach to the exchange of information with the system integrator that includes interfaces, the target environment, supporting information packs and format, and timescales for the delivery of the component to the system integrator.	
4.8	The Contractor shall provide 100 hours of support time to the system integrator to cover activities such as ad-hoc telephone or video conferences, as required by the system integrator, to respond to queries should the component not function as expected in the system integrator's target system.	
4.9	The Contractor shall be required to host a Customer Acceptance Event at the point of delivery of support to system integration to support acceptance. The Authority reserves the	Customer Acceptance Event

	right to invite a representative of the system integrator to the acceptance event.	
4.1	The Contractor will be required to support the integration activities occurring under 'Phase 2 – Component Integration and Feedback'.	



## Appendix A – PYRAMID Key User Requirements

Requirement	Description
Resilient Against Obsolescence	The User shall be able to deploy the PYRAMID mission system onto a range of underlying computing platforms and, therefore, it shall not be tied to the Original Equipment Manufacturers' (OEM's) computing solution.
Scalable	The User shall be able to deploy complete, or selectable part, instances of the PYRAMID mission system into integrated system solutions that form part of a range of families of systems that span the full range of platform system classes.
Exploitable	The User shall be able to deploy the PYRAMID mission system architecture and associated software components across multiple national, collaborative, and export equipment programmes utilising the open reference architecture to gain maximum leverage for the UK supplier base and maximum return on investment on this reusable capability.
Flight Certifiable	The User shall be able to have instances of the PYRAMID mission system certified for flight against civil and military regulations as part of a complete system deployment.
Security Accreditable	The User shall be able to have instances of the PYRAMID core mission system security accredited by Defence Assurance and Information Security (DAIS) against MOD security policies and with security risks mitigated to an acceptable level relevant to the security risk owner.
Configurable	The User shall be able to configure instances of the PYRAMID mission system, such that mission capability exploits available and emerging hardware, software and data services with minimal impact on the qualified mission system. Configurable items include system behaviour with varying levels of autonomy during both planning and airborne phases, across all areas associated with mission and flight aids employment; data handling and appropriate vehicle system interfaces. Additionally, the User shall be able to configure necessary elements of the Operator-Mission Interface (OMI), including Human-Machine Interface (HMI) aspects.
Utility (Across a Range of Mission Requirements)	Dependent upon the core capabilities of the host air vehicle, the User shall be able to participate in a broad gamut of operations including: Intelligence, Surveillance and Reconnaissance (ISR); Command and Control (C2); Attack; and Control of the Air. The User shall also be able to conduct communications relay and where present operate any associated defensive aids systems.
Future Growth (Potential)	The User shall be able to further develop the PYRAMID Mission System reference architecture and deployed instances of the PYRAMID Mission System through evolutionary changes in response to operational and non-operational drivers with the minimum of resource and time overhead.

**Appendix B – Project Meeting Schedule**

1. The Contractor shall be required, in accordance with DEFCON 642 (Progress Meetings), to attend the progress meetings, as detailed below.
2. Expected locations for meetings shall be held within the United Kingdom at either the Contractor or Authority sites and rotate equitably between these sites.
3. If meetings cannot be held at physical locations, virtual meetings should be used with collaboration technology supporting up to, and including, OFFICIAL-SENSITIVE material, audio, video, and screen-sharing.

<b>SER</b>	<b>Meeting Title</b>	<b>Date</b>	<b>Location</b>
01	Contract Kick-Off	2 Weeks from Contract Award	MOD Abbey Wood (Or Virtual)
02	Project Management Meeting	Monthly from Contract Kick-Off Meeting	MOD Abbey Wood, following by equitable rotation (Or Virtual)
03	Technical Interchange Meeting	Monthly from Contract Kick-Off Meeting	MOD Abbey Wood, following by equitable rotation (Or Virtual)
04	Maturity Review (Phase 1A)	2 Months into Delivery of Phase 1A	Contractor's Premises (Or Virtual)
05	Maturity Review (Phase 1B)	2 Months into Delivery of Phase 1B	Contractor's Premises (Or Virtual)
06	Joint Risk Reviews	6 Weekly from Contract Award	MOD Abbey Wood (Or Virtual)

### **Appendix C – Project Reporting**

1. The Contractor will be required, in accordance with DEFCON 604 (Progress Reports), DEFCON 605 (Financial Reports), and DEFCON 647 (Financial Management Information), to submit the following reports, as detailed below:

<b>Report</b>	<b>Delivery Date</b>	<b>Update Interval</b>	<b>Delivery Location</b>
Project Management Plan	Submission of ITT response to the Authority	Completion of Phase 1A and Completion of Phase 1B.	CESTIUS Project Manager
Project Schedule	Submission of ITT response to the Authority	Contract Award, then monthly, prior to Working Day 5, until October 2021.	CESTIUS Project Manager
Progress Reports	2 Weeks from Contract Award	Fortnightly, until Contract End	CESTIUS Project Manager
Risk and Opportunities Register	Submission of ITT response to the Authority	Monthly, prior to Working Day 5, until October 2021	CESTIUS Project Manager
Project Review Materials	1 Month from Contract Kick-Off Meeting	Consistent with Project Management Meetings	CESTIUS Project Manager
Technical Review Materials	1 Month from Contract Kick-Off Meeting	Consistent with Project Management Meetings	CESTIUS Technical Lead
Financial Reports (in accordance with DEFCON 605 and the FOO Template at Schedule 13)	4 Weeks from Contract Award	Monthly, until Contract End, delivered by Week 3 of each month	CESTIUS Cost Controller
Financial Management Information (in accordance with DEFCON 647)	4 Weeks from Contract Award	Monthly, until Contract End, delivered by Week 3 of each month	CESTIUS Cost Controller

**Schedule 10 – Deliverable Item Description (DID)**

<b>Deliverable Item Description (DID)</b>	
<b><u>Title:</u></b> PYRAMID Component (Baseline)	<b><u>DID No.</u></b> DID-CESTIUS-001
<b>DEFCON:</b>	DEFCON 91
<b>Submittal Schedule:</b>  Draft: 21 <sup>st</sup> July 2021  Final: 20 <sup>th</sup> August 2021	<b>Responsible Dept:</b> Engineering
	<b>WBS Reference Number:</b> WP1.2.2 & WP1.2.3
	<b>Statement of Work Reference No:</b> 2.2
<b><u>Objective:</u></b>  Develop and deliver a baseline component implementation that addresses the functionality of either: 'interlocks', 'time determination', or 'sensors', as defined by the PYRAMID Exploiter's Pack, complete with a statement of compliance to PYRAMID  <b><u>Description:</u></b>  The Contractor will develop and deliver artefacts for a PYRAMID component to the UK MOD, consistent with the information provided in the PYRAMID Exploiter's Pack. The baseline component should comprise, as a minimum, an interface specification for provided interface(s), an interface specification for required interface(s), dependencies on the software execution environment, licence terms, a compliance statement consistent with the PYRAMID Exploiter's Pack, and representative artefacts to support safety engagement, security engagement, and PYRAMID compliance.  <b><u>Acceptance Criteria for Final Deliverable:</u></b> <ul style="list-style-type: none"> <li>- Following a customer acceptance event in which a demonstration of component functionality in an appropriate test harness/environment, provided by the Contractor, so that the functionality of the baseline implementation can be observed.</li> <li>- Demonstrable alignment of the baseline implementation with the description of the component provided in the PYRAMID Exploiter's Pack, such as the roles and responsibilities.</li> <li>- Demonstration that the baseline component implementation DOES NOT exceed the roles and responsibilities detailed in the PYRAMID Exploiter's Pack.</li> <li>- Deviation from the information provided in the PYRAMID Exploiter's Pack have been captured, documented, and previously agreed with the Authority, such as where an issue is found in the PYRAMID Exploiter's Pack that prevents meeting a PYRAMID policy or feature.</li> <li>- The Acceptance Process at Schedule 08.</li> </ul>	

Deliverable Item Description (DID)	
<b><u>Title:</u></b> PYRAMID Component (Amended)	<b><u>DID No.</u></b> DID-CESTIUS-002
<b>DEFCON:</b>	DEFCON 91
<b>Submittal Schedule</b>  Draft: 29 <sup>th</sup> September 2021  Final: 22 <sup>nd</sup> October 2021	<b>Responsible Dept:</b> Engineering
	<b>WBS Reference Number:</b> WP1.2.6 & WP1.2.7
	<b>Statement of Work Reference No:</b> 2.3
<b><u>Objective:</u></b> <p>Refine and deliver the baseline component implementation to produce an amended component that addresses the information in the component specification provided by the system integrator to facilitate the delivery of Phase 2.</p>	
<b><u>Description:</u></b> <p>The Contractor will deliver an amended component implementation by refining the baseline component implementation using information on the target integration environment and its impact on the component, provided by the system integrator, consistent with the scope of Phase 1B to enable the delivery of Phase 2.</p> <p>The amended component should comprise, as a minimum, tested software with a demonstration to the system integrator that the requirements in the component specification have been met; an interface specification for provided interface(s), an interface specification for required interface(s), dependencies on the software execution environment, license terms, statements on the addressal of functional and non-functional requirements in the component specification, and representative artefacts to support safety engagement, security engagement (including functional requirements test results), security engagement, and PYRAMID compliance.</p>	
<b><u>Acceptance Criteria for Final Deliverable:</u></b> <ul style="list-style-type: none"> <li>- Following a customer acceptance event in which a demonstration of component functionality in an appropriate test/harness environment provided by the Contractor, so that the functionality of the amended component can be observed.</li> <li>- Demonstrable alignment between the component implementation and the component description, in terms of both functional and non-functional requirements, to the satisfaction of the system integrator.</li> <li>- Demonstration that the amended component implementation DOES NOT exceed the roles and responsibilities in the PYRAMID Exploiter's Pack or the component specification.</li> <li>- Deviations from the component specification have been captured, documented, and previously agreed with the Authority and the system integrator.</li> <li>- Accordance with the Acceptance Process at Schedule 08.</li> </ul>	

Deliverable Item Description (DID)	
<b><u>Title:</u></b> Lessons Learned Report (Version 1)	<b><u>DID No.</u></b> DID-CESTIUS-003
<b>DEFCON:</b>	DEFCON 703
<b>Submittal Schedule</b>  Draft: 28 <sup>th</sup> July 2021  Final: 27 <sup>th</sup> August 2021	<b>Responsible Dept:</b> Engineering
	<b>WBS Reference Number:</b> WP1.2.4 & WP1.2.5
	<b>Statement of Work Reference No:</b> 3.3
<p><b><u>Objective:</u></b></p> <p>Deliver a Lessons Learned Report at the completion of Phase 1A that captures the lessons learned from the experience of using the PYRAMID Exploiter's Pack to develop a baseline component implementation that can be used to refine PYRAMID materials.</p> <p><b><u>Description:</u></b></p> <p>The Lessons Learned Report (Version 1) should comprise a range of feedback on all aspects of the Contractor's experience of development using the PYRAMID Exploiter's Pack. Focus areas for Version 1 of the report are captured at '2.4 Requirement'.</p> <p><b><u>Acceptance Criteria for Final Deliverable:</u></b></p> <ul style="list-style-type: none"> <li>- The document is a useable source of improvement and feedback on the PYRAMID Exploiter's Pack, i.e. the comments are specific and self-contained such that the authors of the PYRAMID material will be able to understand the issues without requiring additional engagement with the Contractor.</li> <li>- The document includes recommendations, where decisions were taken on the project that led to a successful outcome.</li> <li>- The report addresses the focus areas captured at '2.4 Requirement'.</li> <li>- Accordance with the Acceptance Process at Schedule 08.</li> </ul>	

Deliverable Item Description (DID)	
<b><u>Title:</u></b> Lessons Learned Report (Version 2)	<b><u>DID No.</u></b> DID-CESTIUS-004
<b>DEFCON:</b>	DEFCON 703
<b>Submittal Schedule</b>  Draft: 6 <sup>th</sup> October 2021  Final: 17 <sup>th</sup> November 2021	<b>Responsible Dept:</b> Engineering
	<b>WBS Reference Number:</b> WP1.2.8 & WP1.2.9
	<b>Statement of Work Reference No:</b> 3.3
<p><b><u>Objective:</u></b></p> <p>Deliver a Lessons Learned Report at the completion of Phase 1B that captures the lessons learned from the experience of using the component specification, provided by the system integrator, to develop an amended component implementation that can be used to refine PYRAMID materials.</p> <p><b><u>Description:</u></b></p> <p>The Lessons Learned Report (Version 2) should comprise a range of feedback on all aspects of the Contractor's experience of development using the component specification, provided by the system integrator, to amend the baseline component implementation. Focus areas for Version 1 of the report are captured at '2.4 Requirement'</p> <p><b><u>Acceptance Criteria for Final Deliverable:</u></b></p> <ul style="list-style-type: none"> <li>- The document is a useable source of improvement and feedback on the PYRAMID Exploiter's Pack, i.e. the comments are specific and self-contained such that the authors of the PYRAMID material will be able to understand the issues without requiring additional engagement with the Contractor.</li> <li>- The document includes recommendations, where decisions were taken on the project that led to a successful outcome.</li> <li>- The report addresses the focus areas captured at '2.4 Requirement'.</li> <li>- Accordance with the Acceptance Process at Schedule 08.</li> </ul>	

**Schedule 11 – Delivery and Milestone Payment Plan**

1. This Schedule is in accordance with Condition 46.1 and outlines the delivery dates for the Deliverables, in accordance with Schedule 10 (Deliverable Item Description), as well as the Milestone Payments that shall be made to the Contractor upon acceptance of the Deliverables
2. Serial Numbers 1, 2a, 4a, and 4b are Firm Price.
3. Serial Number 5 is a Firm Price for an hourly rate up to 100 hours. This hourly rate shall only be paid for the effort expended and the hours utilised in order to provide support to the System Integrator.
4. Serial Numbers 3a, 3b, and 3c are Cost Plus, previously known as 'Ascertained Costs'.
5. The Contractor shall submit an invoice for the 'Amount Due' for Serial Numbers 1, 2a, 2b, 4a, and 4b after delivery of the Deliverables has taken place, and they have been accepted.
6. For Serial Numbers 3a, 3b, and 3c, the Contractor shall submit their actuals monthly in accordance with Clause 46.1.
7. For Serial Number 5, the Contractor shall submit an invoice quarterly with a Firm Price for the hours used in that quarter; e.g. if 25 hours have been utilised in that quarter, the Contractor shall submit an invoice for the 25 hours at the hourly rate specified below.

<b>Work Package (WP) 1 – Project Management</b>						
<b>Serial No.</b>	<b>Milestone Description</b>	<b>Milestone Detail</b>	<b>Milestone Acceptance Criteria</b>	<b>Delivery No Later Than:</b>	<b>Amount Due £ (Ex VAT)</b>	<b>Cumulative Total £ (Ex VAT)</b>
1	<b>SOR Item 1</b> Delivery of Progress Reporting	i.a.w Schedule 9 Section 2.3.1, Section 2.5, Section 3 WP1, Appendix D	i.a.w Schedule 9 (SoR)	Every 2 weeks from Contract Award until October 2021		
<b>Work Package (WP) 2 – Component Development</b>						
2a	<b>SOR Item 2</b> Delivery of final PYRAMID Component (Baseline)	DID-CESTIUS-001	i.a.w Schedule 9 (SoR), Schedule 8 (Acceptance), and DID-CESTIUS-001	20th August 2021		
3a	<b>SOR Item 3</b> Delivery of PYRAMID Component (Amended)	DID-CESTIUS-002 August 2021 Actual Costs			Max Price:	



**OFFICIAL – SENSITIVE**

3b	<b>SOR Item 3</b> Delivery of PYRAMID Component (Amended)	DID-CESTIUS- 002  September 2021 Actual Costs				
3c	<b>SOR Item 3</b> Delivery of final PYRAMID Component (Amended)	DID-CESTIUS- 002  October 2021 Actual Costs	i.a.w Schedule 9 (SoR) and Schedule 8 (Acceptance)	22 <sup>nd</sup> October 2021		
<b>Work Package (WP) 3 – Lessons Learned Report</b>						
4a	<b>SOR Item 4</b> Delivery of final Lessons Learned Report Version 1	DID-CESTIUS- 003	i.a.w Schedule 9 (SoR), Schedule 8 (Acceptance) and DID- CESTIUS- 003	27 <sup>th</sup> August 2021		
4b	<b>SOR Item 4</b> Delivery of final Lessons Learned Report Version 2	DID-CESTIUS- 004	i.a.w Schedule 9 (SoR), Schedule 8 (Acceptance) and DID- CESTIUS- 004	17 <sup>th</sup> November 2021		
<b>Work Package (WP) 4 – Support to System Integration</b>						
5	<b>SOR Item 5</b> Delivery of 100 hours of support to System Integration	i.a.w Schedule 09 Sections 45 - 46, and Section 3 WP4		Weekly from October 2021 until Contract End	Firm Hourly Rate:	£440,734

**Schedule 12 – Specimen Agreement for Software Where Percentage Levy Rates Apply**

**Commercial Exploitation of Computer Software Developed at Government Expense**

CEL Agreement No. *tbc*

Delivery Team Details: Combat Air Strategy Team (CAST)

This AGREEMENT is made the *tbc* day of *tbc* 2021 BETWEEN THE SECRETARY OF STATE FOR DEFENCE (hereinafter called 'the Ministry') of the one part and *tbc* whose registered office is situated at *tbc*(hereinafter called 'the Contractor' which expression where the context so admits or requires shall include its successors in title) of the other part.

**WHEREAS:**

- (1) By virtue of conditions of (a) Contract(s) between the Contractor and the Ministry the Contractor has developed certain Computer Software for the Ministry and is the beneficial owner of all Intellectual Property Rights therein;
- (2) By virtue of the conditions of said Contract(s) the Contractor is permitted to commercially exploit said Computer Software provided that it first agrees with the Ministry the sum or sums which should reasonably be paid to the Ministry having regard to the amount paid or payable to the Contractor by the Ministry under the Contract(s) and other relevant Contracts.
- (3) The parties hereto have agreed that the aforementioned sum or sums payable and the conditions governing payment thereof shall be as set forth in the following Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

**Definitions**

1. In this Agreement the following terms shall have the following meanings:

- a. 'The Contract(s)' means Contract Number(s) 701005378 between the Ministry and the Contractor for CESTIUS Phase 1.
- b. 'Contract(s) Software' means the computer program or part thereof generated under the Contract(s) and including any adaptation, extraction, translation, modification or enhancement thereof and any associated documentation such as program user guides.
- c. the 'Contractor' includes any subsidiary company or associated company of the Contractor.
- d. 'Sale' means any sale transaction, lease or hire of, or the grant of an end-user licence in respect of, the Contract(s) Software in whole or in part by the Contractor, and derived terms such as 'selling' shall be construed accordingly.
- e. 'Bureau Services' - means a service whereby the benefit of the Contract(s) Software is provided to a customer for gain, without transfer of the Contract(s) Software to the customer.
- f. 'Leviable Transaction' means any transaction giving rise to levy under this agreement, and shall include a transaction for the supply of the Contract(s) Software and the grant of

licences and shall also include a transaction for Bureau Services.

g. The 'Contractor's selling price' means the price for which the Contractor invoices its customer before the deduction of any discounts but excluding such of the following elements as are applicable and can be identified to the satisfaction of the Ministry;

- (1) freight costs and insurance;
- (2) packaging not developed at UKG expense;
- (3) the cost of ECGD servicing and other sales finance charges;
- (4) any charges relating to MOD inspection;
- (5) installation and commissioning costs incurred where installation and commissioning formed no part of the work under the Contract(s) but excluding the cost of providing any warranty;
- (6) Agent's fees and commissions;
- (7) Value Added Tax where applicable.

Provided that any element of Profit which the Contractor has included in the above items (1) to (7) shall not be so included.

h. 'Profit' other than for the purposes of the above proviso to sub-clause (g) above means the difference between the Contractor's selling price and the allowable costs as prescribed by the Ministry for the purpose of the Sale in question provided such difference is a positive sum.

### **Sales and Licences**

2. Should the Contractor sell any Contract(s) Software or any material reproducing the Contract(s) Software other than for any purpose set out in Clause 8 hereof the Contractor shall pay to the Ministry:

- a. A levy for the use of the Intellectual Property Rights enshrined in the Contract(s) Software including copyright to be calculated at 80% of the Contractor's selling price.
  - b. A share of the profits on any Leviable Transaction for which the Contractor's gross receipts exceed £15M in value (for which purpose contemporaneous Leviable Transactions of the same Contract(s) Software to the same customer will count as one Leviable Transaction), said share to be agreed between the Contractor and Ministry before the transaction contract is entered into. The threshold of £15M may be increased from time to time by the Ministry, in relation to future transactions to take into account inflation.
3. Should the Contractor grant a licence to reproduce the Contract(s) Software and to enable the Licensee to sell the Contract Software(s) or should the Contractor assign or otherwise dispose of its rights in the Contract(s) Software, the Contractor shall pay the Ministry a levy calculated at 80% of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof.

Provided that:

- a. The Contractor shall not assign or grant an exclusive licence or otherwise dispose of its rights in the Contract(s) Software without the prior written consent of the Ministry, which consent shall not be unreasonably withheld. It will be a condition of consent that the terms of the said assignment or said exclusive licence or disposition shall be consistent with the terms and conditions of this Agreement and that before entering into an Agreement to assign or grant an exclusive licence or otherwise dispose of its rights in the Contract(s) Software the Contractor shall ensure that the proposed assignee or the proposed exclusive licensee enters

into an agreement with the Ministry reserving to the Ministry the rights granted to it in the Contract(s);

b. Where the consideration comprises wholly or in part some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing 80% of what may be reasonably regarded as the value of the said benefit; and

c. The Contractor shall not grant any licence or make an assignment or otherwise dispose of its rights in the Contract(s) Software where there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy (if any) should reasonably be paid to the Ministry in respect of such licence assignment or disposition of rights.

4. If the Contractor uses the Contract(s) Software to develop other computer software, and the Contractor wishes to enter into a Sale involving the computer software as developed, then the Contractor shall notify the Ministry prior to the said Sale, and the levy due upon the said Sale shall be agreed upon between the Ministry and the Contractor.

5. The Contractor shall not place in the public domain or disclose to a third party the Contract(s) Software nor any computer software developed by use of the Contract(s) Software without first notifying the Ministry and agreeing with the Ministry the amount of levy that shall be payable in respect of such placement or disclosure.

6. Where an agreement for the maintenance of the Contract(s) Software between the Contractor and another party for a fee also includes the supply of the Contract(s) Software not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable price for the Supply of the Contract(s) Software.

7. Subject to Clause 8 below payment of levy is deemed to include payment for the use of any Intellectual Property Rights owned by the Ministry (or in the case of copyright, administered for commercial exploitation by the Ministry) which is in the Contractor's possession and is necessary in connection with the Sale or other transaction giving rise to levy under this Agreement.

8. This Agreement does not provide a right to use or include payment for the use of any Intellectual Property Rights (or in the case of copyright, administered for commercial exploitation by the Ministry) which are administered and managed on behalf of the Ministry by the Meteorological Office.

9. It shall be the sole responsibility of the Contractor to ensure that it has secured adequate rights from any third party to use and exploit elements of the Contract(s) Software in which the Intellectual Property Rights are owned by such third party.

10. No levy shall be payable in respect of;

a. the supply of the Contract(s) Software to the Ministry;

b. the supply of the Contract(s) Software under any transactions with the Ministry's Agents or its contractor or sub-contractor where the Contract(s) Software can be clearly identified as being supplied to meet the requirements of the Ministry.

**Sales or Licensing of Adaptations, Extraction's, Translations, or Enhancements of the Contract(s) Software.**

11. Sales involving, or licences to reproduce, adaptations, extraction's, translations or enhancements of the Contract(s) Software shall attract levy in accordance with this

Agreement unless the Ministry agrees that an allowance may be made for software that was not developed at UK Government expense.

**Contract Software for Contractor's Own Use.**

12. Without prejudice to Clause 3 above unless the Contract(s) Software is subsequently sold, no levy shall be due where the Contractor reproduces the Contract(s) Software solely for its own research or development purposes or for its own demonstration or sales promotion purposes. Contract(s) Software reproduced and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clauses 2 to 6 hereof.

**Abatement of Levy**

13. Where, in the circumstances of an individual Sale, the Contractor considers that the effect upon its selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice its chances of completing the Sale or would result in an unreasonably low profit, it shall be open to the Contractor before the Sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 15 and 16 herein. Provided that the Contractor's Cost Accounting System is adequate in the opinion of the Ministry to provide the statements for allowable costs necessary to implement the scheme such approval shall not be unreasonably withheld.
14. The abatement scheme shall generally determine levy on the basis of outturn profitability of the Sale in question expressed as a percentage of the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:
  - a. The first 5% of profit on cost shall be retained by the Contractor.
  - b. The remaining profit, without upper limit, shall be shared between the Ministry and the Contractor in the ratio of 1:1 until a total profit of 25% on cost has been reached, and thereafter in a ratio to be agreed between the Ministry and the Contractor.
15. Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revised by either party for the Sale in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it is so desired, to verify the statement. Where the value of the sale is less than £500,000 any abatement levy may at the discretion of the Ministry be settled (before the Sale Contract is entered into) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry.
16. Where an abatement scheme has been approved in accordance with Clauses 13 to 15 of this Agreement the Contractor shall be liable for an interim payment of levy in accordance with the provisions of Clause 20 of this Agreement at one-half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the Sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.

**Cancelled Orders**

17. Where a Sale is cancelled and the Contractor has received any payments, whether from its customer or otherwise, which it is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair

and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to the Ministry Delivery Team named in the Contract and shall provide such information as may be necessary or reasonably required for the determination of the levies payable under this clause. If a sale is entered into which involves any Contract(s) Software or any adaptation, extraction, translation or enhancement thereof which was involved in the said cancelled Sale levy will again be due on the above-mentioned basis.

## Accounting

18. The liability of the contractor to the Ministry for any sum due under this Agreement shall accrue:
  - a. in respect of sales on the date of delivery;
  - b. in respect of cancelled Sales, six months after the date of termination or such longer period as may be agreed between the Contractor and the Ministry;
  - c. in the case of licences, assignment or other disposition of rights in the Contract(s) Software on the date of receipt by the Contractor of each payment.
19. The Contractor shall prepare statements which contain information concerning every Sale, licence, assignment or disposition of rights or other Leviable Transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:
  - a. the nature of the Leviable Transaction (making clear under which of the Clauses 2 to 12 hereof it falls), and the date thereof and the name and address of the other party or parties thereto;
  - b. in the case of a Sale the number of copies of the Contract(s) Software sold, the selling price and in any other case, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof;
  - c. in the case of any other Leviable Transaction, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof;
  - d. any other matters relevant to determining the levy payable;
  - e. the sum (to the nearest pound) computed to be payable by the Contractor to the Ministry in respect of each transaction (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).
20. The Contractor shall supply to Defence Business Services Finance-Commercial Exploitation Arrangement Team , 1st Floor, Walker House, Exchange Flags, Liverpool L2 3YL, two copies of the Statement at six monthly intervals commencing with the first Sale or licensing, assignment or disposition of rights arrangements.
21. The statement shall be provided not later than two months after the close of the period to which it relates and 'nil' statements shall thereafter be provided whenever appropriate. Where there are 'nil' returns over a number of years and no evident prospect of a future leviable activity or receipt the Contractor should approach the Ministry Delivery Team commercial officer regarding future reporting arrangements.
22. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by Defence Business Services Finance-Commercial Exploitation Arrangement Team. Payments

(including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.

23. Should the Contractor fail to provide Statements within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.
24. Two copies of an annual certificate that the sum reported on the Statements are correct and complete in accordance with the Contractor's books of account and records, or that no Sale has been made or licence assignment or disposition of rights in the Contract Software granted or other Leivable Transactions entered into, shall be obtained by the Contractor from its auditor and shall be forwarded to Defence Business Services Finance-Commercial Exploitation Arrangement Team not later than six months after the end of the Contractor's financial year.
25. The Contractor shall maintain proper books of accounting records at its premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office for the purpose of verifying that the terms and conditions of this Agreement are being complied with.
26. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Ministry or with any Department of Her Majesty's Government.
27. The Contractor shall notify the Ministry Delivery Team named in the Contract(s), quoting the number of the Contract, of details of all transactions involving the Contract(s) Software as set out in (a), (b) and (c) below:
  - a. Immediately it becomes apparent to the Contractor that a Sale (or contemporaneous Sale of the same software to the same Contractor) which is of value above £15M (or such higher value as may be notified by the Ministry from time to time) to the Contractor may arise, and the Contractor shall notify the said Ministry Delivery Team of the estimated value.
  - b. In the event of negotiations for the grant of a licence, assignment or other disposition of rights relating to the Contract(s) Software, immediately a draft licence, assignment or other such document pertaining to the said disposition has been prepared, and shall supply a copy of the said document to the Ministry Delivery Team.
  - c. Immediately it becomes apparent to the Contractor that any change in the situations referred to in sub-clause (a) and (b) of this clause is likely to occur.

### **Export Licence**

28. Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:
  - a. obtaining the necessary export licences as applicable to any overseas sale;  
or
  - b. obtaining any necessary release for security restrictions in force for the Contract(s) Software.
29. The Contractor is advised to consult the Export Team, Security Policy and Operations, MOD, 4.C, Whitehall, London SW1A 2HB, on a case by case basis, before making offers to sell or licence the Contract(s) Software overseas.

### Arbitration

30. All disputes, differences or questions between the parties to this agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Contractor) or their Umpire, in accordance with the Arbitration Act 1996\*\*.

### Law

31. This Agreement shall be construed as a contract made in England\*\* and shall be subject to English Law\*\*.

(\*\* Amend as necessary should Scots Law apply –you should model the revision on DEFCONs 529A and 530A, omitting from the latter references to other conditions and matters on which the MOD's decision is final.)

Signed:  
(MOD Contracts)

Signed:  
(Contractor)

Date: *tbc*

Date: *tbc*



**Schedule 13 – FOO Template**

1. This schedule is in accordance with the Appendix C (Project Reporting) of Schedule 9 and DEFCON 605.
2. See Schedule 13 attached.

**Schedule 14 – Statement of Work (SOW)**

**Text has been redacted under the Commercial Confidentiality exemptions set out by the Freedom of Information Act.**

## **DEFFORM 111**

### **DEFFORM 111**

#### **Appendix - Addresses and Other Information**

##### **1. Commercial Officer**

Name: David Welton

Address: Combat Air Strategy Team (CAST), Defence Equipment and Support (DE&S), #1202 Spruce 2A, MOD Abbey Wood, Bristol, BS34 8JH, United Kingdom

Email: David.Welton437@mod.gov.uk ☎☎ 07955 520539

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

Name: Aaron Simpson

Address Combat Air Strategy Team (CAST), Defence Equipment and Support (DE&S), #1202 Spruce 2A, MOD Abbey Wood, Bristol, BS34 8JH, United Kingdom

Email: Aaron.Simpson145@mod.gov.uk ☎☎ 07765110173

##### **3. Packaging Design Authority Organisation & point of contact:**

Box 2

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

☎☎ Box 2

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

Branch/Name: Box 2

☎☎ Box 2

**(b) U.I.N.** P8414A

##### **5. Drawings/Specifications are available from Box 2**

##### **6. Intentionally Blank**

##### **7. Quality Assurance Representative:** Ben Brett-Morgan

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: Combat Air Strategy Team (CAST), Defence Equipment and Support (DE&S), #1202 Spruce 2A, MOD Abbey Wood, Bristol, BS34 8JH, United Kingdom

**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, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

☎☎ 0151-242-2000 Fax: 0151-242-2809

**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:** [Leidos-FormsPublications@teamleidos.mod.uk](mailto:Leidos-FormsPublications@teamleidos.mod.uk)

**\* NOTE**

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

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

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

## **Deliverables**

### **Deliverables Note**

This matrix is intended to provide an overview of the parties' contractual obligations to assist with contract management. It does not form part of the contract and should not be relied upon to aid interpretation of the contract. In the event of any conflict, inconsistency or discrepancy between this matrix and the contract, the terms of the contract shall take precedence.

### **Supplier Contractual Deliverables**

#### Supplier Contractual Deliverables

Name	Description	Due	Responsible Party
Obligation Condition 36.c - Payment	no later than 30 days from receipt of valid undisputed invoice		Supplier Organization
Obligation Condition 37.c - Notification of applicable VAT	Notification of VAT liability or changes to it		Supplier Organization
Obligation Condition 42.c.(2) - Post notification of Termination	List of Unused and undamaged materiel; contractor deliverables in the course of manufacture.		Supplier Organization
Obligation Clause Condition 42.f - Subcontract Termination	inclusion of Termination clause in subcontracts over £250,000		Supplier Organization
Commercial Exploitation Levy - Reminder that Statements of Sales and Auditor Certificate are required annually	Applicable to contracts with Commercial Exploitation Agreements. A reminder to Suppliers that Statements of Sales along with Auditor Certificate are required annually.	01-JAN-2020	Supplier Organization
Obligation Condition 1.c.(2) - Notification of litigation	Notification of; Litigation, arbitration, administrative, adjudication or mediation proceedings against itself or a Subcontractor		Supplier Organization
Obligation Condition 1.c.(4) - Notification of Winding-up	Notice of any proceedings or steps taken for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator,		Supplier Organization
Obligation Condition 5.b - Notice of inconsistency between contract documents	If either Party becomes aware of any inconsistency within or between Contractual documents they shall notify the other Party forthwith		Supplier Organization
Obligation Condition 18.a - Contractors Records (reminder)	maintain all records in connection with the Contract for a period of at least six (6) years		Supplier Organization
Obligation DEFCON 21 (Edn 10/04) Clause - 3a - Maintenance of Deliverables (reminder)	To maintain at least one copy of all deliverable information to which DEFCON 21 applies during the period of the Contract and for at least two years after the Contract, or period as may be specified in the contract.		Supplier Organization
Obligation DEFCON 91 (Edn 11/06)	A copy of the Software as is required for performance of		Supplier Organization

Clause - 5b - Software as required	obligations to be retained.		
Obligation Condition 20.a - Attendance at Progress Meetings	attend progress meetings at the frequency or times specified in the contract		Supplier Organization
Obligation Condition 20.b - Progress Reports	submit progress reports at the times and in the format specified in the contract		Supplier Organization
Obligation Condition 16.a - Change of Control of Contractor	Written Notification of any intended, planned or actual change in control of the Contractor, including any Sub-contractors.		Supplier Organization
Obligation Condition 16.b - Notification of Concern due to Change of Control	advise the Contractor in writing of any concerns due to Change of Control		Supplier Organization

**Buyer Contractual Deliverables**

## Buyer Contractual Deliverables

Name	Description	Due	Responsible Party
Obligation Condition 33.a 33.i - Import Export Licence Information	sufficient information, certification, documentation and other reasonable assistance to obtain necessary UK import/export licence or to facilitate the granting of export/import licences or authorisations by a foreign Government		Buyer Organization
Obligation Condition 33.l - Notification of restrictions in use due to non-UK licence	If 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		Buyer Organization
Obligation Condition 36.a - Register on CP&F	provide details for registration on CP&F		Buyer Organization
Obligation Condition 42.a - Termination	Written notice of Termination of part or whole of contract		Buyer Organization
Obligation Condition 5.b - Notice of inconsistency between contract documents	If either Party becomes aware of any inconsistency within or between Contractual documents, they shall notify the other Party forthwith		Buyer Organization
Obligation Condition 8.c - Change in Authority Representatives	Written confirmation of any change to the Authorities Representatives		Buyer Organization
Obligation Condition 14.f.(6) - Use of confidentiality agreement	Disclosure of Information on a confidential basis shall be subject to a confidentiality agreement containing terms no less stringent than those placed on the Authority		Buyer Organization