



Ministry  
of Defence

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UKStratCom-Comrcl C1-03

Ministry of Defence  
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Email: Demelza.clegg109@mod.gov.uk

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Your Reference:

Our Reference:  
714600450

Date: 20 June 2025

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Dear Sir/Madam

**Invitation To Tender (ITT) Reference No. 714600450**

1. You are invited to tender for an Open Competition under Procurement Act 2023 (PA23) in accordance with the attached documentation.
2. The requirement is for Lessons; - Professional services support in the form of 8 full time personnel providing an effectively executed lessons capability to ensure the development of the Integrated Warfare Centre (previously Joint Warfare) into an adaptable and innovative force.
3. The anticipated date for the contract award decision is 15 August 2025. Please note that this is an indicative date and may change.
4. You must submit your Tender to the Defence Sourcing Portal by 09:00 Wednesday 16 July 2025

Yours faithfully

Demelza Clegg  
UKStratCom-Comrcl C1-13

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Invitation To Tender  
for  
Lessons Contract 714600450

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### Contents

This invitation to tender ("ITT") sets out the procurement process including general terms governing the procurement, notices on the conduct of Tenderers, and the response requirements that Tenderers must meet to submit a compliant Tender. It also contains the draft contract, further related documents and forms.

This ITT consists of the following documentation:

- a. DEFFORM 47 – Invitation to Tender. For ease it is broken into:
  - Section A – Introduction Page 5
  - Section B – Key Tendering Activities Page 11
  - Section C – Instructions on Preparing Tenders Page 13
  - Section D – Tender Evaluation Page 14
    - Annex A Evaluation Methodology & Criteria Page 15
  - Section E – Instructions on Submitting Tenders Page 38
  - Section F – Conditions of Tendering Page 39
  - DEFFORM 47 Annex A – Tender Submission Document (Offer) Page A1
    - Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations
- b. Draft Contract Documents Page 55
  - including the Schedule of Requirements and any additional Schedules, Annexes and/or Appendices as detailed in Table of Contents on Page 2.
- c. DEFFORM 111 – Appendix to Contract - Addresses and Other Information. Page 151
- d. DEFFORM 539A – Tenderer's Sensitive Information (or SC2 Schedule 5) Page 122
- e. DEFFORM 532 (Schedule 16) and Annex B to Schedule 16 Personal Data Aspects Letter
- f. Appendix 2 to DEFFORM 47 (Schedule 14) Security Aspects Letter
- g. Appendix 3 to DEFFORM 47: (Schedule 11) TUPE Data
- h. Appendix 4 to DEFFORM 47: (Schedule 2) Pricing Schedule
- i. Appendix 5 to DEFFORM 47 (Schedule 12) Ethical Walls

Please note that e. to h. above are attached as standalone documents to limit file size, however the documents form part of the Draft Contract Documents.

## Section A – Introduction

### DEFFORM 47 Definitions

In this ITT the following words and expressions shall have the meanings given to them below:

- A1. “The Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown.
- A2. “Compliance Regime” is a legally enforceable set of rules, procedures, physical barriers and controls that, together, control the flow of sensitive or protected information to parties to whom it may give an unfair advantage.
- A3. “Conditions of Tendering” including those set out in Section F, means the conditions set out in this DEFFORM 47 that govern the competition.
- A4. A “Consortium Arrangement” means two or more economic operators who have come together specifically for the purpose of bidding for this Contract and who establish a consortium agreement or special purpose vehicle to contract with the Authority.
- A5. “Contract” means the contract entered into between the successful Tenderer or consortium members and the Authority, should the Authority award a contract as a result of this competition.
- A6. “Draft Contract” means the draft contract including any schedules, annexes and appendices issued to Tenderers by the Authority as part of this ITT.
- A7. “Contractor Deliverables” means the works, goods and/or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance (QA) requirements if specified) which the Contractor is required to provide under the Contract.
- A8. “Cyber Security Model” means the model defined in DEFCON 658.
- A9. “Defence Sourcing Portal” means the electronic platform in which Tenders are submitted to the Authority.
- A10. “Government Furnished Assets” (GFA) (Schedule 13) refers to government owned assets, such as equipment, information, or resources, that are made available to Contractors on a free- of -charge basis to help them to fulfil a contract.  
“Government Furnished Information” (GFI) means information or data issued or made available to the Tenderer in connection with the Contract by or on behalf of the Authority.
- A11. “ITT Documentation” means this ITT and any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access by the Authority, for the purposes of responding to this ITT.
- A12. “ITT Material” means any other material (including patterns and samples), equipment or software, in any medium or form issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT.
- A13. “Schedule of Requirements” (Section 1 in Terms and Conditions, Schedule 2 in Standardised Contracting Template 1B (SC1B) or Schedule 2 in Standardised Contracting

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Template 2 (SC2)) means that part of the Contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.

A14. The “Statement of Requirement” (Schedule 15) means that part of the Contract which details the technical requirements and acceptance criteria of the Contractor Deliverables.

A15. A ‘Sub-Contractor’ means any party engaged or intended to be engaged by the Contractor at any level of sub-contracting to provide the Contractor Deliverables.

A16. A “Sub-Contracting Arrangement” means a group of suppliers who have come together specifically for the purpose of bidding for this Contract, where one of their number will be the party to the Contract, and the remaining members of that group will be Sub-Contractors.

A17. A “Tender” is the written offer (including any supporting Tender documents where permitted) that you are making to the Authority in response to this ITT.

A18. “Tenderer” means the supplier submitting a response to this Invitation to Tender. Where “you” is used this means an action on you the Tenderer.

A19. A “Third Party” is any person (including a natural person, corporate or unincorporated body), other than the Authority, the Tenderer or their respective employees.

### **Purpose**

A20. The purpose of this ITT is to invite you to submit a Tender, in accordance with the instructions set out in this ITT, to propose a solution and best price to meet the Authority’s requirement. This documentation provides:

- a. the timetable for the next stages of the procurement;
- b. the instructions, terms and processes that govern this procurement;
- c. information you must include in your Tender and the required format;
- d. the arrangements for the receipt and evaluation of Tenders;
- e. the criteria and methodology for the evaluation of Tenders;
- f. the draft Contract; and
- g. sufficient information for Tenderers to submit a compliant Tender.

A21. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance and/or precedence.

A22. This requirement was advertised by the Authority: UK1 Pipeline Notice in Defence Sourcing Portal dated 23 May 2025 with the following reference: 714600450.

A23. This ITT is subject to the Procurement Act 2023. Tenderers established outside the UK, Crown Dependencies and British Overseas Territories do not have legal rights under the Procurement Act 2023 to participate in government procurements for defence and security contracts covered by section 7(1)(a) to (f) of the Procurement Act 2023 and in respect of

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Authority procurements which are not for non-sensitive goods within the scope of the Free Trade Agreements listed in Schedule 9 to the Procurement Act 2023 (as amended from time to time). Please note that should the Authority open this procurement to tenderers established outside the UK, the Crown Dependencies and British Overseas Territories, the rights and remedies under the Procurement Act are under no circumstances, whether expressly or impliedly, extended to such tenderers.

A24. This ITT has been advertised on the Defence Sourcing Portal (DSP) under the open procedure.

A25. Funding has been approved for this requirement.

### **ITT Documentation and ITT Material**

A26. ITT Documentation, ITT Material and any intellectual property rights (IPR) in them shall remain the property of the Authority (where relevant) or other Third-Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
- b. treat the ITT Documentation and ITT Material as confidential and not copy, reproduce, distribute, pass on or disclose the ITT Documentation or ITT Material to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
- d. if required in writing by the Authority under sub-paragraph A26.c, obtain undertakings from those to whom ITT Documentation and ITT Material is disclosed that they will keep the ITT Documentation and ITT Material confidential;
- e. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A26.c, which as a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
- f. accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and/or infringement of IPR, a remedy which may involve a claim for compensation;
- g. inform the named Commercial Officer if you decide not to submit a Tender;
- h. subject to any legal requirement to retain ITT Documentation or ITT Material for the purposes of complying with any statutory obligation and/or for the purposes of the conduct of legal proceedings which have commenced or are reasonably anticipated, immediately confirm destruction of (or in the case of software, that it is beyond use) all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that

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your Tender has been unsuccessful or that you have been disqualified from this procurement; and

- i. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.

A27. Some or all the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement are in addition to, and do not derogate from, your obligations under paragraph A26 above.

### **Tender Expenses**

A28. You will bear all costs associated with preparing and submitting your Tender. The Authority will not be liable for the costs of any Tender, work or effort incurred by you participating in this tender process, including where the tender process is terminated or amended by the Authority, where the Authority decides not to award a Contract or where you withdraw from the tender process either directly or indirectly as costs under any other Contract with the Authority.

### **Consortia and Sub-Contracting Arrangements**

A29. The Authority requires all Tenderers to identify whether any and/or which Consortium Arrangements or Sub-Contracting Arrangements will apply in the case of their Tender, and in particular specify the Consortium Arrangement or Sub-Contracting Arrangement entity or both and their workshare. In the case of a Sub-Contracting Arrangement, the Authority requires all Tenderers to identify the entity that will be the party to the Contract with the Authority.

### **Material Change to Information and/or Control**

A30. You must inform the Authority in writing as soon as you become aware of:

- j. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of your request to participate response or in connection with the submission of your request to participate response;
- k. for procurements covered by the Procurement Act 2023, any material changes to any of the Connected Persons or Associated persons (including in the supply chain) communicated to the Authority as part of your request to participate response;
- l. any material changes to any of the intended Sub-Contractors communicated to the Authority as part of your request to participate response;
- m. any material adverse change in your circumstances which may affect the truth, completeness or accuracy of any information provided as part of your request to participate response or in connection with the submission of your request to participate response or in your financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member; or
- n. any material changes to your financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; and



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- o. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:
  - i. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured;
  - ii. the identity of Consortium Arrangement or Sub-Contracting Arrangement;
  - iii. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and
  - iv. any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.

A31. If a change described in paragraph A30 occurs, the Authority may reassess you against the request to participate criteria. The Authority reserves the right to require you to submit an updated/amended request to participate response (or parts thereof) to reflect the revised circumstances so that the Authority can make a further assessment by applying the published selection criteria to the new information provided. The outcome of this further assessment may affect your suitability to proceed with the procurement.

A32. In relation to a change described in paragraph A30, as far as is reasonably practicable, you must discuss any such proposed changes with the Authority before they occur and you must additionally highlight any changes from your request to participate response relating to any change in the Consortium Arrangement or Sub-Contracting Arrangement or any change relating to conflicts of interest following a change, directly or indirectly in your ownership or control or of any Consortium Arrangement or Sub-Contracting Arrangement

A33. The Authority reserves the right, at its sole discretion to disqualify any Tenderer who makes any material change to any aspects of their responses to the request to participate if:

- p. they fail to re-submit to the Authority the updated relevant section of their request to participate response providing details of such change in accordance with paragraph A31 as soon as is reasonably practicable and in any event no later than 03 business days following request from the Authority; or
- b. having notified the Authority of such change, the Authority considers that the effect of the change is such that on the basis of the evaluation undertaken by the Authority for the purpose of selecting potential providers to participate in the procurement, the Tenderer would not have pre-qualified.

### **Draft Contract**

A34. The Draft Contract includes all attachments, such as the Schedule of Requirements, any additional Schedules, Annexes and/or Appendices. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the [Knowledge in Defence \(KiD\)](#) website.

A35. Draft Standardised Contract 2 (SC2) conditions are attached.

### **The Armed Forces Covenant**

A36. The Armed Forces Covenant

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- q. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives, as a result of their service.
- r. The Covenant is based on two principles:
  - i. That the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
  - ii. That special consideration is appropriate in some cases, especially for those who have given most, such as the injured and the bereaved.
- s. The Authority encourages all Tenderers, and their suppliers, to sign the Armed Forces Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.
- t. [The Armed Forces Covenant](#) provides guidance on the various ways you can demonstrate your support through your Covenant pledges and how by engaging with the Covenant and Armed Forces, such as employing Reservists, a company or organisation can also see real benefits in their business.
- u. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the Authority can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: [employerrelations@rfca.mod.uk](mailto:employerrelations@rfca.mod.uk)

Address: Defence Relationship Management  
Ministry of Defence  
Holderness House  
51-61 Clifton Street  
London  
EC2A 4EY
- v. Paragraph A36 a to d above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation, Contract award procedure or any resulting Contract. However, the Authority very much hopes you will want to provide your support.

### Other Information

#### A37. (a) Security Aspects Letter

The Security Aspects Letter (Schedule 14 to the Draft Standardised Contract 2 (SC2) has been added as an attachment to the Tender.

(b) Ethical Walls Schedule 12 Annex 1 must be read and completed by Contractor and returned with Tender.

## Section B – Key Tendering Activities

The key dates for this procurement are currently anticipated to be as follows:

Stage	Date and Time	Responsibility	Submit to:
Final date for Clarification Questions/Requests for additional information	01 July 2025 10:00	Tenderers	Defence Sourcing Portal
The Authority issues Final Clarification Answers	08 July 2025 18:00	The Authority	All Tenderers
Tender Return	16 July 2025 09:00	Tenderers	Defence Sourcing Portal
Negotiations	N/A	N/A	N/A
Tender Evaluation	16 July 2025 10:00	The Authority	N/A

### Notes

#### Tenderers Conference

B1. A Tenderers Conference is not being held.

#### Clarification Questions

B1. All clarification questions relating to this procurement must be submitted by Tenderers in writing on the DSP.

B2. The Authority reserves the right not to respond to clarification questions raised after the final deadline. Tenderers must indicate the order of priority of their submitted clarification questions to assist the Authority in managing its responses.

B3. Tenderers should note that the purpose of the clarification question process is to obtain clarity on aspects of this procurement. The Authority reserves its right not to respond to questions which have not been submitted for the purpose of clarification.

B4. Tenderers are advised not to include any commercially sensitive information in any Tenderer clarification question or any identifying information as Authority responses for non-confidential Tenderer clarification questions will be published to all Tenderers.

B5. If, however, a Tenderer considers that it is impossible to submit a Tenderer clarification question without including commercially sensitive information, the Tenderer shall, when submitting the Tenderer clarification question:

- a. state that the Tenderer clarification question contains what the Tenderer believes to be commercially sensitive information;
- b. identify which specific part(s) of the Tenderer clarification question contains commercially sensitive information; and
- c. explain why the information is believed to be commercially sensitive.

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B6. The Authority will consider the Tenderer's reasons and may choose to discuss the matter with the Tenderer before deciding whether to:

- a. respond to the Tenderer clarification question; or
- b. reject the Tenderer clarification question.

B7. If the Authority decides that it will respond to the Tenderer clarification question, it will also decide whether to communicate to other Tenderers the Authority's response to that question. The decisions of the Authority in relation to these matters shall be final.

B8. If the Authority decides that it will communicate the Tenderer clarification question to the other Tenderers, but the Tenderer does not wish for the Tenderer clarification question to be disclosed, the Tenderer may withdraw the Tenderer clarification question by notifying the Authority via email no later than 1 (one) working day from when the Authority communicates its decision to the Tenderer.

### **Tender Return**

B9. The Authority may, in its own absolute discretion extend the deadline for receipt of tenders and in such circumstances the Authority will notify all Tenderers in writing of any change.

### **Negotiations**

B10. Negotiations do not apply to this tender process.

## **Section C - Instructions on Preparing Tenders**

### **Construction of Tenders**

- C1. Your Tender must be written in English, using Arial font size 11 and comply with any margin, spacing and page limit requirements set out in the Tender document. Prices must be in £GBP, excluding UK VAT. Prices must be Firm Price for Mobilisation and both the two (2) year Contract term and the two (2) Option Years. However, Fixed Pricing will apply to Option Year two (2) which will be calculated in accordance with the indexation formula set out in the Statement of Requirements (Schedule 15), should the second Option year be invoked. A price breakdown must be included in accordance with the requirements set out in Section D in the Tender.
- C2. To assist the Authority's evaluation, you must set out your Tender response in accordance with Section D (Tender Evaluation).

### **Validity**

- C3. Your Tender must be valid and open for acceptance for ninety (90) calendar days from the Tender return date. In addition, the winning Tender must be open for acceptance for a further thirty (30) calendar days once the Authority announces its decision to award the Contract. In the event that legal proceedings challenging the award of the Contract are instituted, before entry into Contract, you must hold your Tender open for acceptance during this period, and for up to fourteen (14) calendar days after any legal proceedings have concluded.

## **Section D – Tender Evaluation**

D1. Your Tender will be evaluated solely in accordance with the methodology and award criteria set out in Annex A to Section D.

- a. D2. Tenders will be evaluated in the form in which they are submitted and it is therefore incumbent on Tenderers to ensure that their Tenders are fully compliant with the requirements set out in this ITT and are clear, complete and internally consistent. However, the Authority reserves the right (but is not obliged) to: seek clarifications from any Tenderer regarding any aspects of its Tender that may be incomplete or missing; and/or
- b. accept or reject any Tender which has incomplete or missing information or does not meet the requirements set out in this ITT.

D3. It is the Tenderer's responsibility to clearly identify where the Authority can find the relevant information/evidence required for the Authority to evaluate the Tenders.

D4. Any matter addressed through the formal clarification process throughout ITT, and formally agreed by the Authority, but omitted from a Tender will not be considered or taken into account by the Authority during the evaluation process.

D5. The Authority may use external knowledge or information for validation or verification purposes, but it is not obliged to do so.

## Annex A to Section D – Evaluation Methodology and Award Criteria

### LESSONS CONTRACT

714600450

### REQUIREMENTS OF RESPONSE (RoR)

&

### TENDER EVALUATION SCORING METHODOLOGY

Contents:

- A. Technical /Quality Evaluation Criteria - Mandatory
- B. Technical / Quality Evaluation Criteria – Scored and Weighted
- C. Social Evaluation Criteria
- D. Price Evaluation Criteria
- E. Tender Evaluation Scoring Methodology

#### A. Technical /Quality Evaluation Criteria - Mandatory

Question	Category / Description of Requirement	Yes / No
	<b>Compulsory Criteria</b>	
<b>A1</b>	Confirm that you will hold <a href="#">ISO 9001</a> accreditation or equivalent, by the indicative Contract Award date, and confirm that you will provide evidence upon request of the Authority.	
<b>A2</b>	Subject to the applicability of the TUPE regulations, confirm that you can provide the number of personnel at the locations detailed in the Statement of Requirement. <sup>1</sup>	
	<b>Minimum Mark Required:</b> This criterion requires the Contractor answer <b>Yes</b> to all questions to be deemed acceptable to the Authority. A negative answer to any of the means that the Tender would not be acceptable to the Authority and shall not pass the Technical/Quality Evaluation. The Tender shall therefore be rejected.	

<sup>1</sup> 1 x contractor in JHub, located at Central Scale Space, White City; 1 x contractor in IWC Analysis team and 3 x contractors in PJHQ working in Building 440 at Northwood HQ; 2 x contractors in Security, Policy and Operations, MOD Main Building, Whitehall; 1 x contractor in the Defence Experimentation and Wargaming Hub, variously at MOD Southwick Park and Shrivenham;

**B. Technical / Quality Evaluation Criteria (RoR Questions; Weighting: 55% of Overall Evaluation Score) – Scored and Weighted**

Question	Category / Description of Requirement	Weighting %
	<b>Capability and Capacity</b>	<b>20%</b>
<b>B1</b>	<p><b>Evidence Required:</b></p> <p>Please detail how you plan to resource and ensure appropriate capability and capacity to manage the Defence Lessons contract throughout the term of the contract.</p> <p>A strong bid will provide:</p> <p>Evidence to demonstrate the depth and breadth of expertise offered by the Contractor's team.</p> <p>While there should be a clear focus on individuals within the bidding organisation, the credibility and reputation of the bidding organisation within the fields of analytical assessment and organisational learning are also important.</p> <p>Evidence of working collaboratively and in partnership with clients on two contracts of a similar scale.</p> <p>Evidence of processes in place to ensure resilience and mitigate risks relating to business continuity, particularly in relation to the absence of key Contractor personnel.</p> <p>Contractor's solution should include the identification of key risks associated with this element of the solution and appropriate risk mitigations.</p> <p>They should also include a list of any key assumptions relevant to this element of the solution</p>	
	<p><b>Minimum Mark Required:</b> This criterion requires the Contractor to secure a minimum mark of 7 (Good Confidence) to be deemed acceptable to the Authority. A mark of 3 (Minor Concerns) or a zero (Critical Concerns) means that the Tender would not be acceptable to the Authority and shall not pass the Technical/Quality Evaluation. The Tender shall therefore be rejected.</p>	
<p><i>N.B. Question B1 represents 20% of the Technical / Quality Evaluation Score, which comprises 55% of the Overall Evaluation Score. Response: Contractors are advised that a word count limit of 1000 words apply to Question B1. If the word count exceeds this limit, only the first 1000 words will be counted. Word count does not include diagrams, flowcharts, tables etc.</i></p>		



Question	Category / Description of Requirement	Weighting %
	<b>Supply Chain Resilience</b>	<b>20%</b>
<b>B2</b>	<p><b>Competence Required:</b></p> <p>Evidence Required:</p> <p>Please detail how you will provide assured access to a network of qualified Lessons Contractors to conduct lessons capture, analysis and exploitation for the Authority throughout the term of the contract.</p> <p>Please detail the supply chain and process for managing replacement personnel and events such as sickness throughout the contract duration.</p> <p>A strong bid will provide:</p> <p>A capability statement which details the Contractor's experience within this field, including how they have established and secured supply chains to deliver specialist analytical assessment and organisational learning.</p> <p>Evidence of established networks through which suitably qualified and experienced personnel can be sourced.</p> <p>Evidence of effective strategies for attracting and recruiting high quality Lessons Contractors.</p> <p>Evidence of successful strategies for retaining and incentivising high-quality Lessons Contractors during the term of the contract.</p> <p>Evidence of how the supply chain management will be managed, risk managed and key considerations.</p> <p>The Contractor's solution should include the identification of key risks associated with this element of the solution and appropriate risk mitigations.</p> <p>They should also include a list of any key assumptions relevant to this element of the solution.</p>	
	<p><b>Minimum Mark Required:</b> This criterion requires the Contractor to secure a minimum mark of 7 (Good Confidence) to be deemed acceptable to the Authority. A mark of 3 (Minor Concerns) or a zero (Critical Concerns) means that the Tender would not be acceptable to the Authority and shall not pass the Technical/Quality Evaluation. The Tender shall therefore be rejected.</p>	

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*N.B. Question B2 represents 20% of the Overall Technical / Quality Evaluation Score, which comprises 55% of the Overall Evaluation Score. Response: Contractors are advised that a word count limit of 1000 words apply to Question B2. If the word count exceeds this limit, only the first 1000 words will be counted. Word count does not include diagrams, flowcharts, tables etc.*

Question	Category / Description of Requirement	Weighting %
	<b>Quality of delivery and staff development and upskilling</b>	<b>20%</b>
<b>B3</b>	<p><b>Competence Required:</b></p> <p>Please detail how you will ensure that delivery of the Contracted Lessons Service meets the quality standards required by the Authority, in particular your proposed approach to Lesson Contractor selection, development, upskilling and assurance.</p> <p>A strong bid will include:</p> <p>Evidence of subject matter expertise in the fields of analytical assessment and organisational learning.</p> <p>Evidence of a plan to deliver high-quality analytical assessment and organisational learning as required by the Authority.</p> <p>Evidence of a plan to monitor the performance of Lessons contractors, in accordance with the Statement of Requirement, (Schedule 15) and Key Performance Indicators (Schedule 9).</p> <p>Evidence of a clear strategy to promote continuous improvement of the Service. To include (but not limited to) your approach to Continuous Professional Development (CPD) and upskilling for Lessons Contractors.</p> <p>Evidence demonstrating how you intend to actively promote knowledge transfer and collaborative learning between contractors.</p> <p>Contractor's solutions should include the identification of key risks associated with this element of the solution and appropriate risk mitigations.</p> <p>They should also include a list of any key assumptions relevant to this element of the solution.</p>	
	<p><b>Minimum Mark Required:</b> This criterion requires the Contractor to secure a minimum mark of 7 (Good Confidence) to be deemed acceptable to the Authority. A mark of 3 (Minor Concerns) or a zero (Critical Concerns) means that the</p>	

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	Tender would not be acceptable to the Authority and shall not pass the Technical/Quality Evaluation. The Tender shall therefore be rejected.	
<i>N.B. Question B3 represents 20% of the Overall Technical / Quality Evaluation Score, which comprises 55% of the Overall Evaluation Score. Response: Contractors are advised that a word count limit of 1000 words apply to Question B3. If the word count exceeds this limit, only the first 1000 words will be counted. Word count does not include diagrams, flowcharts, tables etc.</i>		
Question	Category / Description of Requirement	Weighting %
	<b>Mobilisation and Readiness</b>	<b>20%</b>
<b>B4</b>	<p><b>Competence Required:</b></p> <p>Please detail how you will ensure readiness to mobilise for Lessons Service delivery by Contract Go Live 08 October 2025.</p> <p>A strong bid will provide:</p> <p>Evidence of a mobilisation plan to include key activities and outputs, in accordance with D1 and D2 of the Statement of Requirement.</p> <p>Proposed arrangements for working with the Authority to make optimal use of the Authority team's skills, knowledge, and time.</p> <p>Proposed plan for engaging with the extant Contractor (if required) to ensure the smooth transition of the Contracted Lessons Service and to minimise risks to delivery of in-progress work from 08 October 2025.</p> <p>Proposed plan for preparing Lessons contractors to deliver the required Service within the Defence environment at the locations specified in the Statement of Requirement.</p> <p>Proposed arrangements for obtaining DV clearances for all Lessons Contractors so that they are in place within three (3) months of Contract Award date.</p> <p>Contractor's solution should include the identification of key risks associated with this element of the solution and appropriate risk mitigations.</p> <p>They should also include a list of any key assumptions relevant to this element of the solution.</p>	
	<p><b>Minimum Mark Required:</b> This criterion requires the Contractor to secure a minimum mark of 7 (Good Confidence) to be deemed acceptable to the Authority. A mark of 3 (Minor Concerns) or a zero (Critical Concerns) means that the Tender would not be acceptable to the Authority and shall not pass</p>	

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	the Technical/Quality Evaluation. The Tender shall therefore be rejected.	
<p><i>N.B. Question B4 represents 20% of the Overall Technical / Quality Evaluation Score, which comprises 55% of the Overall Evaluation Score. Response: Contractors are advised that a word count limit of 1000 words apply to Question B4. If the word count exceeds this limit, only the first 1000 words will be counted. Word count does not include diagrams, flowcharts, tables etc.</i></p>		

Question	Category / Description of Requirement	Weighting %
	<b>Governance and Reporting</b>	<b>20%</b>
<b>B5</b>	<p><b>Competence Required:</b></p> <p>Please detail how you plan to meet Authority requirements relating to Lessons Contract Governance, Reporting and Continuous Service Improvement (CSI).</p> <p>A strong bid will include:</p> <p>Proposed approach to underpinning Lessons Service provision with comprehensive governance and performance management and procedures that are aligned with the Authority requirements set out in the Statement of Requirement.</p> <p>Proposed approach to performance monitoring and reporting for this contract, including how a data-driven approach will be used to monitor performance against agreed KPIs.</p> <p>Evidence of a strategy for identifying and reporting potential CSI initiatives to ensure the Lessons Service represents good Value for Money.</p> <p>Experience of using innovation to deliver effectiveness or efficiency benefits (or both) to improve service delivery.</p> <p>Evidence of effective mechanisms to identify, manage and mitigate conflicts of interest to maintain integrity and prevent bias in decision-making.</p> <p>Contractor solution should include the identification of key risks associated with this element of the solution and appropriate risk mitigations. They should also include a list of any key assumptions relevant to this element of the solution.</p>	
	<p><b>Minimum Mark Required:</b> This criterion requires the Contractor to secure a minimum mark of 7 (Good Confidence) to be deemed acceptable to the Authority. A mark of 3 (Minor Concerns) or a zero (Critical Concerns) means that the Tender would not be acceptable to the Authority and shall not pass the</p>	

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	Technical/Quality Evaluation. The Tender shall therefore be rejected.	
<p><i>N.B. Question B5 represents 20% of the Overall Technical / Quality Evaluation Score, which comprises 55% of the Overall Evaluation Score. Response: Contractors are advised that a word count limit of 1000 words apply to Question B5. If the word count exceeds this limit, only the first 1000 words will be counted. Word count does not include diagrams, flowcharts, tables etc.</i></p>		

**C. Social Value Evaluation Criteria (RoR Questions; Weighting: 10% of Overall Evaluation Score)**

Question	Category / Description of Requirement	Weighting %
<b>C1- Guidance Notes</b>	<p><b>Mission</b> - Kick start economic growth. To secure the highest sustained growth in the G7 - with good jobs and productivity growth in every part of the country making everyone, not just a few, better off.</p> <p><b>Outcome</b> - Skills for growth: supporting growth sectors and addressing skills gaps.</p> <p><b>Model Award Criteria (MAC)</b> - Learning and skills development opportunities relevant to the contract to address skills gaps.</p> <p><b>Model sub criteria</b> - Activities that demonstrate and describe the supplier's existing or planned:</p> <ul style="list-style-type: none"> <li>• Understanding of employment and relevant skills issues, and of the education and training issues relating to the contract. Illustrative examples: demographics, skills shortages, new opportunities in high growth sectors, geographic/local community and skills/employment challenges</li> <li>• Support for educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications</li> <li>• Activities to support relevant sector related skills growth and sustainability in the contract workforce. Illustrative examples: careers talks, curriculum support, literacy support, safety talks and volunteering</li> <li>• Delivery of apprenticeships, supported internships and T Level industry placement opportunities (Level 2, 3 and 4+) in relation to the contract</li> </ul> <p><b>Standard reporting metric</b> -</p> <p>i. Number of training opportunities (Level 2, 3, and 4+) other than apprentices created or retained under the contract.</p>	<b>100%</b>

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	ii. Number of people-hours of learning interventions delivered under the contract, by UK region.	
<b>C1</b>	<p><b>Competence Required:</b></p> <p>Describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Model Award Criteria.</p> <p>A strong bid will include:</p> <p>Contractor's 'Method Statement', stating how you will achieve this and how your commitment meets the Model Award Criteria.</p> <p>A timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals in accordance with SOR D7.</p> <p>Contractors' responses should include but not be limited to:</p> <ul style="list-style-type: none"> <li>• Timed action plan</li> <li>• Use of metrics</li> <li>• Tools/processes used to gather data</li> <li>• Reporting</li> <li>• Feedback and improvement and;</li> <li>• Transparency</li> </ul> <p>How you will influence staff, suppliers, customers, and communities through the delivery of the contract to support the Policy Outcome, e.g., engagement, co-design/creation, training and education, partnering/collaborating, volunteering. Additionally, the Contractor solution should include identification of the key risks associated with this element of the solution and provide a risks and mitigation plan.</p>	
	<p><b>Minimum Mark Required:</b> This criterion requires the Contractor to secure a minimum mark of 7 (Good Confidence) to be deemed acceptable to the Authority. A mark of 3 (Minor Concerns) or a zero (Critical Concerns) means that the Tender would not be acceptable to the Authority and shall not pass the Technical/Quality Evaluation. The Tender shall therefore be rejected.</p>	
<p><i>N.B. Question C1 represents 100% of the Social Value Evaluation Score, which comprises 10% of the Overall Evaluation Score. Response: Contractors are advised that a word count limit of 750 words apply to Question C1. If the word count exceeds this limit, only the first 750 words will be counted. Word count does not include diagrams, flowcharts, tables etc.</i></p>		

## D. Price Evaluation Criteria

(RoR Questions D1 and D2; Weighting: 35% of Overall Evaluation Score)

### Pricing Instructions:

For the avoidance of doubt Contractors must detail their financial assumptions underpinning the pricing submission as part of their Tender. Any assumptions and allowances should be made purely at the financial risk of the Contractor. The Authority accepts no liability should the Contractor be unable to support the service requirements in future.

The extent of the Service to be priced is defined within the Statement of Requirements (SoR - Schedule 15). Contractors are required to fully complete the Appendix 4 to DEFFORM 47 - Pricing Schedule in response to D1 and D2 below.

Contractors should note that in accordance with the Commercial Evaluation Criteria a failure to complete Appendix 4 to DEFFORM 47- Pricing Schedule in line with the below instructions shall be deemed as a Fail and the Contractor will not pass the Commercial Evaluation and will therefore be rejected.

Question	Category / Description of Requirement	Price Weighting %
D1	<b>Mobilisation</b>	
	<p>Contractors are requested to provide a Total Firm Price for any associated Mobilisation Costs for the period from Contract Award to commencement of the services (08 October 2025) in GBP (£), within the relevant table within Appendix 4-Pricing Schedule. (Mobilisation).</p> <p>Contractors should ensure the price is provided in accordance with the instructions within this table and those within Appendix 4 - Pricing Schedule. (Mobilisation).</p> <p>The Total Mobilisation Price will be evaluated.</p>	5%

Question	Category / Description of Requirement	Price Weighting %
D2	<b>Lessons Capability</b>	95%
	<p>Contractors are requested to provide a Monthly Firm Price for Lessons Contractor Grades for the initial two (2) year contract term for the period from Contract Award up to commencement of the services (08 October 2025) in GBP (£), Ex VAT, within the relevant table within Appendix 4 - Pricing Schedule. The Monthly Firm Price will calculate a Total Annual Firm Price, which will be used to calculate the Total Firm Price for evaluation purposes.</p> <p>Contractors are requested to provide a Monthly Firm Price for Lessons Contractor Grades for Option Year one (1) and a Monthly and Total Annual Fixed Price for Option Year two (2). (The Fixed Pricing will be subject to the Indexation formula detailed in the Statement of Requirements (Schedule 15) at the time, should Option Year two (2) be invoked.)</p> <p>Contractors should ensure the price is provided in accordance with the instructions within this table and those within Appendix 4 - Pricing Schedule.</p> <p>Contractors are also requested to provide full day rates in GBP (£). for Lessons Contractor Grades within the relevant table within Appendix 4 - Pricing Schedule. (Daily Rates). Contractors should note that a full day is based on 8.5 hours, 0830-1700hrs including a maximum of a one-hour break.</p> <p>The Total Annual Price over four (4) years will be evaluated.</p> <p><b>The Full Day Rates are for information purposes only and will not form part of the Evaluation Score.</b></p>	



**N.B. Questions D1 and D2 represents 5% and 95% of the total Price Evaluation Score respectively, which comprises 35% of the Overall Evaluation Score.**

## **E. Tender Evaluation Scoring Methodology**

### **1. Overview of Evaluation Process**

Evaluation is the process by which the Provider's bid is assessed and then marked by the Authority in accordance with the criteria outlined in this document.

The overall evaluation criteria is based on a five-stage process as follows: -

- Commercial Evaluation (Pass/Fail)
- Technical/ Quality - Mandatory (Pass/Fail)
- Technical/ Quality Evaluation -Scored and Weighted (55% of overall Score)
- Social Value Evaluation (10% of overall score)
- Price Evaluation (35% of overall score)

-  
Each bid submitted will be evaluated, assessed, and marked by each member of the Evaluation Panel in accordance with the evaluation process detailed within this document.

### **Minimum Participation Criteria**

The minimum condition of participation relating to this tender is the completion of the entire tender return, as per instructions included within the DEFFORM 47, ITT and this Requirements of Response. Contractors who do not meet these minimum criteria will be excluded from the tender process.

### **Minimum Pass Mark**

Technical/Quality Criteria B1 to B5 (inclusive) and C1 have minimum pass marks assigned to them as detailed in the note below each criterion. Contractors who do not meet the minimum pass mark on any of the applicable Technical/Quality Criteria shall be deemed to have failed and will not pass the Technical/Quality Evaluation.

### **Criteria Weightings**

Each Evaluation Criteria has been assigned a weighting according to its significance to the project. With the exception being the Pass/Fail Criteria.

### **Evaluation Methodology**

The Evaluation Methodology for each stage of the Evaluation Process can be found in Sections 2-7 (inclusive) below.

Contractors' responses to each of the Technical/Quality and Social Value Criteria will be awarded marks between 0 and 10, with the maximum 10 marks being available for each question.

The following list provides the general scoring rationale for each score:

- 10 Marks - High Confidence – receives 100% of the Max Available Score for the Question
- 7 Marks - Good Confidence – receives 66% of the Max Available Score for the Question
- 3 Marks - Minor Concerns – receives 33% of the Max Available Score for the Question
- 0 Marks- Critical Concerns – receives 0% of the Max Available Score for the Question

**10 Marks - High Confidence – receives 100% of the Max Available Score for the Question**

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The Contractor has provided a solution that:

Provides the Authority with a high level of confidence

Meets or exceeds the Authority's stated aim

Provides evidence which exceeds that required to demonstrate confidence in delivery of the solution

Provides the Authority with a high level of confidence that the solution is robust, as a result of:

Identification of all key risks together with the provision of comprehensive mitigation plans

Identification of all key assumptions.

**7 Marks - Good Confidence – receives 66% of the Max Available Score for the Question**

The Contractor has provided a solution that meets each of the following:

Provides the Authority with a good level of confidence

Meets the Authority's stated aim

Provides evidence which meets that required to demonstrate confidence in delivery of the solution

Provides the Authority with a good level of confidence that the solution is robust, as a result of:

Identification of key risks together with the provision of comprehensive mitigation plans

Identification of key assumptions.

**3 Marks - Minor Concerns – receives 33% of the Max Available Score for the Question**

**The Contractor has provided a solution that:**

Provides the Authority with minor concerns

In some areas, does not sufficiently meet the Authority's stated aim

Provides evidence that is insufficient to fully demonstrate delivery of the solution

Provides the Authority with minor concerns that the solution is robust, as a result of:

Insufficient identification of risks together with the provision of comprehensive mitigation plans

Insufficient identification of assumptions.

**0 Marks- Critical Concerns – receives 0% of the Max Available Score for the Question**

**The Contractor has provided a solution that:**

Provides the Authority with critical concerns

Does not meet the Authority's stated aim

Provides evidence presented which does not meet that required to demonstrate delivery of the solution

Provides the Authority with critical concerns that the solution is robust, as a result of;

A failure to identify risks together with the provision of comprehensive mitigation plans

A failure to identify assumptions.

## **Final Evaluation Results**

The Most Advantageous Tender (MAT) process is being used to evaluate the tenders. The Authority shall calculate an Overall Evaluation Score in accordance with Section 6 of this Requirements of Response and the Contractor with the highest Overall Evaluation Score shall be deemed the winner and the Authority's preferred Lessons Contractor.

Should two or more Contractors be awarded the same Overall Evaluation Score the Authority will follow the Tied Score Process as per Section 7 to identify a winning Contractor.

## **2. Commercial Evaluation Methodology**

Each Contractor shall firstly be assessed against the Commercial Evaluation criteria detailed in the table below. Should Contractors fail to provide unqualified acceptance to this criterion and not provide declaration of unqualified acceptance, or should the Contractors state anything in their Assumptions that undermines compliance with the criteria, this will be deemed as a Fail and the Contractor will not pass the Commercial Evaluation and will therefore be rejected.

Should Contractors fail to complete the required Documents as part of their Tender response this will be deemed as a Fail and the Contractor will not pass the Commercial Evaluation and will therefore be rejected. Only Contractors deemed Commercially compliant will be assessed against the remaining Evaluation Criteria.

Once the Authority's Commercial team has confirmed that the Contractor has passed the Commercial criteria the unpriced tender documents will be passed to the Technical team for the Technical/Quality Evaluation to take place.

The Commercial Assessment will be carried out independently by the Authority's Commercial Team and will not include any of the Technical/Quality Assessors.

<b>Criteria</b>	<b>Category / Description of Requirement</b>	<b>Weighting %</b>
<b>Commercial Criteria 1</b>	<b>Commercial compliance</b> Contractor has completed the Tender Response Checklist on the DSP including unconditional acceptance of the Contract Terms and Conditions, completion and provision of the DEFFORM 47 (including Mandatory Criteria and supporting documents), and the PSQ (Conditions of Participation).	<b>Pass / Fail</b>
<b>Commercial Criteria 2</b>	<b><u>Completion of Pricing Schedule</u></b> Contractor has completed Appendix 4 to DEFFORM 47 (Pricing Schedule), and associated Appendices in accordance with the instructions detailed within Appendix 4 (Pricing Schedule)	<b>Pass / Fail</b>

### **3. Technical and Quality Evaluation Scoring Methodology**

Each Contractor that has passed the Commercial Evaluation shall then proceed to the Technical/Quality Mandatory stage. The Contractor will need to pass the Pass/Fail Technical/Quality questions before being evaluated against B1-B5. Each Contractor shall then be evaluated against Technical/Quality Evaluation Criteria B1 – B5 (inclusive) and scored in accordance with the Scoring Methodology detailed within Section 6 of this document.

In order to pass the Technical/Quality Evaluation (Scored and Weighted) the Contractor is required to score at least the specified Minimum Pass Mark in all Technical/Quality Evaluation Criteria. Contractors who do not meet the specified Minimum Pass Mark on any of the applicable Technical/Quality Criteria shall be deemed to have failed and will not pass the Technical/Quality Evaluation (Scored and Weighted) and will therefore be rejected.

#### **Overall Technical/Quality Score**

Once the Contractors have been allocated a Technical/Quality mark against each of the Technical/Quality Evaluation B1-B5 Criteria, the Authority will calculate an overall Technical/Quality Weighted Score.

To calculate the Technical/Quality Weighted Score for each evaluation criteria the Authority will undertake the following calculation:

**Technical/Quality Weighted Score = (Maximum Available Score for Question x Percentage of Maximum Available Score Achieved) x Overall Technical/Quality Weighting**

Examples of this calculation can be found below:

#### **Example 1**

A technical/ quality mark of 10 for Question B1 = 100% of the maximum available score

The Technical/ Quality weighted score =  $(20 \times 100\%) \times 55\%$

Technical/ Quality weighted score = 11

#### **Example 2**

A technical/ quality mark of 7 for Question B2 = 66% of the maximum available score

The Technical/ Quality weighted score =  $(20 \times 66\%) \times 55\%$

Technical/ Quality weighted score = 7.3

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The Weighted Score against each Technical/Quality question shall then be combined to give the Contractor an Overall Technical/Quality score.

Each Contractor Overall Technical/Quality Score will be rounded to one decimal place.

The table below details the Maximum Technical/Quality score, the Criteria Weighting, Available Marks and Total Weighted Marks Available against each of the 5 Technical/Quality questions.

Question	Question Description	Max Technical/Quality Marks	Criteria Weighting %	Max Available Score for Section	Max Total Technical/Quality Weighted Score Available
B1	Capability & Capacity	10	20%	20	11
B2	Supply Chain Resilience	10	20%	20	11
B3	Quality of delivery and staff development	10	20%	20	11
B4	Mobilisation Readiness	10	20%	20	11
B5	Governance, Reporting and Continuous Service Improvement	10	20%	20	11
<b>Total Available Marks</b>			<b>100%</b>	<b>100</b>	<b>55</b>

#### 4. **Social Value Evaluation Methodology**

Each Contractor that has passed the Commercial and Technical/Quality Evaluation shall then proceed to the Social Value Evaluation. Each Contractor shall be evaluated against the Social Value Evaluation Criteria (C1) and marked in accordance with the Scoring Methodology both detailed within Section B of this document.

Once the Contractors have been allocated a Social Value mark against the Evaluation Criteria the Authority will calculate an Overall Social Value Weighted Score.

#### **Overall Social Value Score**

To calculate the Overall Social Value, Score the Authority will undertake the following calculation:

**Overall Social Value Score = (Maximum Social Value Score x Percentage of Maximum Available Score Achieved) x Criteria Weighting**

An example of this calculation can be found below:

#### **Example 1**

A Social Value mark of 7 for Question C1 = 66% of the maximum available score

The Social Value weighted score = (100 x 66%) x 10%

Social Value weighted score = 6.6

The Weighted Score against the Social Value question shall then be used to give the Contractor an Overall Social Value score.

Each Contractor's Overall Social Value Score will be rounded to one decimal place.

The table below details the specific Score Weighting and Available Marks for the question to be evaluated.

Question	Question Description	Max Social Value Marks	Criteria Weighting %	Max Available Score for Section	Max Total Social Value Weighted Score Available
C1	Kick start economic growth. To secure the	10	100	100	10

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	highest sustained growth in the G7 - with good jobs and productivity growth in every part of the country making everyone, not just a few, better off				
<b>Total Available Marks</b>			<b>100%</b>	<b>100</b>	<b>10</b>

### 5. Price Evaluation Methodology

Each Contractor that has passed the Commercial and Technical/Quality Evaluation and has been evaluated against the Social Value criteria shall then proceed to the Price Evaluation. Pricing responses against evaluation criteria (D1) will be awarded a mark based on a comparison against the responses from competing Contractor's. The Authority will then calculate the Weighted Criteria Price Score.

The Weighted Criteria Price score shall then be used to calculate an Overall Price Score. The table below details the Maximum Price score, the Criteria Weighting, Available Marks and Total Weighted Marks Available against the Price question.

Question	Question Description	Max Price Marks	Criteria Weighting %	Max Available Score for Section	Max Total Technical/ Quality Weighted Score Available
D1	Mobilisation	10	5%	5	5
D2	Lessons Capability	10	95%	30	30
<b>Total Available Marks</b>			<b>100%</b>	<b>100</b>	<b>35</b>

#### **D1: Total Value of Mobilisation**

In accordance with Appendix 4 – Pricing Schedule, the Contractor shall provide an overall Total Cost of Mobilisation (exclusive of VAT) for all required SOR deliverables as shown in the table below. The D1 total value will be inclusive of all total costs for Mobilisation of the Lessons Contract and is worth 5% of the overall Price Evaluation.



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The example below illustrates how this methodology will work in principle and is not meant to be representative of the specific requirement:

Lessons Capability	
Total Value (£)	Detailed breakdown of what this cost includes
£600,000.00	XXXXXXX

To calculate the Contractors mark for this Price Criteria the Authority will divide the lowest Total Value of Mobilisation by the Contractors Total Value of Mobilisation. An example of this calculation can be found below:

Contractors Total Value of Lessons Capability: £600,000

Lowest Total Value of Lessons Capability: £500,000

Total Value of Lessons Capability Mark =  $\text{£500,000} / \text{£600,000}$

Total Value Criteria Mark = 0.83

The Price Evaluation Criteria mark which will then be converted to a Price Criteria Weighted Score.

To calculate the Price Criteria Weighted Score for this Price Criteria the Authority will undertake the following calculation:

**Price Criteria Weighted Score = Total Value Criteria Mark x (Price Criteria Weighting) /100 x (Overall Price Weighting)**

An example of this calculation can be found below:

Price Criteria Mark: 0.83

Price Criteria Weighted Score =  $0.83 \times 5 / 100 \times 35$

Price Criteria Weighted Score = 1.45

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The example below illustrates how this methodology will work in principle:

Contractor	Contractors Total Lessons Capability Value	Lowest Lessons Capability Value / Contractors Lessons Capability Value	Lessons Capability Criteria Weighted Score /100 x 35	D1 Price Criteria Weighted Score
Contractor 1	£500,000.00	= £500,000.00 / £500,000.00	5	1.75
Contractor 2	£600,000.00	= £500,000.00 / £600,000.00	5	1.45
Contractor 3	£700,000.00	= £500,000.00 / £700,000.00	5	1.25
Contractor 4	£800,000.00	= £500,000.00 / £800,000.00	5	1.09
Contractor 5	£900,000.00	= £500,000.00 / £900,000.00	5	0.97

### **D2 Total Value of Lessons Capability Delivery Price**

In accordance with Appendix 4 - Pricing Schedule, Contractors are requested to provide a Firm Price for years one (1) and two (2) of the contract and option year one and a Fixed Price for option year two (2).

The D2 total value is worth 95% of the overall Price Evaluation.

To calculate the Contractors mark for Lessons Capability Delivery Price, the Authority will divide the lowest Total Firm Price of Lessons Capability Delivery Price by the Contractor's Total Firm Price of Lessons Capability Delivery Price. An example of this calculation can be found below:

Contractors Total Rate for Evaluation Weighting: £300,000.00

Lowest Contractors lowest Total Rate for Evaluation Weighting £200,000.00

Total Value of Contract Mark = £200,000 / £300,000

Total Value Criteria Mark = 0.66

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The Price Evaluation Criteria mark which will then be converted to a Price Criteria Weighted Score.

To calculate the Price Criteria Weighted Score for this Price Criteria the Authority will undertake the following calculation:

**Price Criteria Weighted Score = Total Value Criteria Mark x (Price Criteria Weighting) /100 x (Overall Price Weighting)**

An example of this calculation can be found below:

Price Criteria Mark: 0.66

Price Criteria Weighted Score =  $0.66 \times 95\% / 100 \times 35$

Price Criteria Weighted Score = 22.16

The example below illustrates how this methodology will work in principle:

Contractor	Contractors Total Lessons Value	Lowest Lessons Value / Contractors Lessons Value	Mobilisation Criteria Weighted Score /100 x 35	D2 Price Criteria Weighted Score
Contractor 1	£200,000.00	= £200,000.00 / £200,000.00	95	33.25
Contractor 2	£300,000.00	= £200,000.00 / £300,000.00	95	22.16
Contractor 3	£400,000.00	= £200,000.00 / £400,000.00	95	17.88
Contractor 4	£500,000.00	= £200,000.00 / £500,000.00	95	13.30
Contractor 5	£600,000.00	= £200,000.00 / £600,000.00	95	11.08

### **Overall Price Score**

To calculate Contractors Overall Price score the Authority will combine the Contractors Price Criteria Weighted Scores from the Price Criteria (D1 and D2) to calculate a Price Criteria Weighted Score.

### **Overall Evaluation Score Methodology**

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The Overall Criteria Score assessed for each evaluation criterion, as detailed in section D1 to D2 above (i.e., the Commercial Evaluation, Technical/Quality Evaluation, Social Value Evaluation and Price Evaluation) will be combined to produce an Overall Evaluation Score out of 100.

Overall Evaluation Score (out of 100 points) comprising:

- Commercial Evaluation (Pass/Fail)
- Technical/Quality (Pass/Fail)
- Technical /Quality Evaluation (60 available points / 60% overall weighting)
- Social Value Evaluation (10 available points / 10% overall weighting)
- Price Evaluation (30 available points / 30% overall weighting)

The Contractor with the highest Overall Evaluation Score will be deemed the Most Advantageous Tender (MAT). Each Contractor Overall Evaluation Score will be rounded to one decimal place.

Contractors should refer to the notional example in the Overall Evaluation Score table below where Contractor 1 achieves the maximum score and hence is the winning Provider

<b>Evaluation Criteria</b>	<b>Contractor 1</b>	<b>Contractor 2</b>	<b>Contractor 3</b>	<b>Contractor 4</b>	<b>Contractor 5</b>
<b>Commercial Evaluation</b>	Pass	Pass	Pass	Fail	Pass
<b>Technical /Quality Evaluation Criteria - Mandatory</b>	Pass	Pass	Pass	Fail	Pass
<b>Overall Technical/Quality Score</b>	55	36.5	36.5	N/A	55
<b>Overall Social Value Score</b>	10	7	10	N/A	7
<b>Overall Price Score</b>	35.00	23.61	19.13	N/A	12.05
<b>Overall Evaluation Score</b>	100.0	67.1	65.6	N/A	74.1

## 6. Tied Score Process

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Should there be a tie in the ranking, between two or more Contractors with the highest Overall Response Score, after the MAT calculation, the following process shall be followed to rank the Contractors and identify a winning Provider:

- a. The Contractor with the highest Technical/Quality Response Score (evaluated score) shall be awarded the Contract.
- b. Should a tie still occur the Contractor with the highest overall Commercial/Price Response Score shall be awarded the Contract

## **Section E – Instructions on Submitting Tenders**

### **Submission of your Tender**

- E1. Subject to paragraphs E4 and E5 below, your Tender must be submitted electronically via the Defence Sourcing Portal (DSP) by 09:00 on 16 July 2025 BST. The Authority reserves the right to reject any Tender received after the stated date and time. Hard copy, paper or delivered digital Tenders (e.g. email, DVD) at OFFICIAL SENSITIVE classification are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender in response to ITT 714600450.
- E2. Your priced Tender must only be submitted to the commercial envelope of the DSP ITT. You must ensure that there are no prices present in the technical or qualification (if applicable) envelopes of the DSP ITT. The Authority has the right to request, at its discretion, that any pricing information found in the technical or qualification (if applicable) envelopes is redacted in accordance with paragraph E3.
- E3. The Authority may, in its absolute discretion allow the Tenderer to rectify any irregularities identified in the Tender by the Authority or provide clarification after the Tender return date but it is not obliged to do so. For example, this may include, but is not limited to, redacting pricing information in the technical or qualification (if applicable) envelopes, rectifying, or providing clarification in relation to a corrupt or blank document. Tenderers will be provided with instructions via the DSP on how they can correct such irregularities which must be completed by the deadline set. The Authority will cross reference the amended Tender with the original Tender submitted to the DSP before the Tender return date to ensure that no other amendments, other than in relation to the specific irregularity/clarification communicated by the Authority, have been made. Should Tenderers make additional amendments to the Tender other than those relating to the specific irregularity/clarification communicated to the Tenderer by the Authority, this will result in a non-compliant bid.-
- E4. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please inform the Authority via the Defence Sourcing Portal if you have a requirement to submit documents above OFFICIAL SENSITIVE.
- E5. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation to the DSP. You must inform the Authority via the Defence Sourcing Portal to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority.
- E6. You must ensure that your DEFFORM 47 Annex A is signed, scanned and uploaded to DSP with your Tender as a PDF (it must be a scanned original). The remainder of your Tender must be compatible with MS Word and other MS Office applications.

### **Lots**

- E7. This requirement has not been split into lots.

### **Variant Bids**

The Authority will not accept variant bids.

## Samples

E8. Samples are not required.

## Section F – Conditions of Tendering

F1. The issue of ITT Documentation or ITT Material is not a commitment by the Authority to place a Contract as a result of this competition or at a later stage. Neither does the issue of this ITT or subsequent Tender create any implied contract between the Authority and any Tenderer and any such implied contract is expressly excluded.

F2. For procurements covered by the Procurement Act 2023, the Authority has the right to remove any Tenderer from this tender process should they, a connected person, or subcontractor/ associated person become or be found to be an excluded or excludable supplier under the Procurement Act 2023 at any point. Should any Tenderer be placed on the debarment list, this could result in their removal from this tender process.

F3. The Authority reserves the right, but is not obliged to:

- a. vary the terms of this ITT in accordance with applicable law;
- b. seek clarification or additional documents in respect of a Tenderer's submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly;
- c. visit your site;
- d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT;
- e. disqualify any Tenderer that is guilty of misrepresentation in relation to their Tender, expression of interest, request to participate or the tender process;
- f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the request to participate response, see paragraphs A30 to A33;
- g. withdraw this ITT at any time, or choose not to award any contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis;
- h. re-issue this ITT on a single source basis (where permitted by the Procurement Act 2023 as applicable), in the event that this procurement does not result in a 'competitive process' as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014;
- i. choose not to award any contract as a result of the current tender process;
- j. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low;

F4. The Contract will be effective when both parties sign the Contract. The Contract will be issued by the Authority via a DEFFORM 8, to the address you provide, on or before the end of the validity period specified in paragraph C3.

### **Conforming to the Law**

F5. In participating in this tender process, you must comply with all applicable UK legislation and any equivalent legislation in a third state.

F6. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender will be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

### **Bid Rigging and Other Illegal Practices**

F7. You must report any suspected or actual bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tender process to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

### **Conflicts of Interest and Distorting Competition**

F8. Any attempt by Tenderers or their advisors to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:

- a. devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member, professional adviser or provider of finance;
- b. enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
- c. enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
- d. canvass the Authority or any employees or agents of the Authority in relation to this procurement; or
- e. attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender.

F9. Where you have provided advice to the Authority in relation to this procurement procedure or otherwise have been or are involved in any way in the preparation or conduct of this procurement procedure or where any other actual or potential conflict of interest (COI) exists, arises or may arise or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must notify the Authority immediately.

F10. Where an actual or potential COI exists or arises or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must provide a proposed Compliance Regime within seven (7) calendar days of notifying the Authority of the



## OFFICIAL

actual, potential or perceived COI. The proposal must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition and provides full details listed at F10 a to g below. Where the Contract is awarded and the COI is still relevant post-Contract award decision, you must promptly notify the Authority and your proposed Compliance Regime will become part of the Contract. As a minimum, the Compliance Regime must include:

- a. the manner of operation and management, including flow down within your organisation;
- b. roles and responsibilities;
- c. standards for integrity and fair dealing;
- d. levels of access to and protection of competitors' sensitive information and Government Furnished Information;
- e. confidentiality and/or non-disclosure agreements (e.g. DEFFORM 702);
- f. the Authority's rights of audit; and
- g. physical and managerial separation

F11. Tenderers are ultimately responsible for ensuring that no actual or potential COI exist between the Tenderer and their advisers, and the Authority and its advisers. Any Tenderer who fails to comply with the requirements described at paragraphs F8 to F11 (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) will be disqualified from the procurement by the Authority.

F12. Where there are circumstances that may cause a perceived COI, Tenderers are required to provide reasonable support and assistance to enable the Authority to manage any perceived COI during this tender process.

### **Government Furnished Assets**

F13. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If unsuccessful in this competition, you must seek instructions for the GFA from the named Commercial Officer.

### **Standstill Period**

F14. The Authority is allowing a period of eight (8) working days from the date of publication of the contract award notice before entering into a Contract, known as the 'standstill period'. The standstill period ends at 23:59 on the 8th working day after the date of the publication of the contract award notice.

### **Publicity Announcement**

F15. If you wish to make an announcement regarding this procurement, you must seek approval from the named Commercial Officer and Press Office and such permission will only be given at the sole discretion of the Authority. Requests must be made in writing to the named Commercial Officer and a copy of the draft announcement provided. This shall then be forwarded to the Press Office and their contact details will be provided for further follow up.

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F16. Under no circumstances should you confirm to any Third Party the Authority's Contract award decision before the Authority's announcement of the award of Contract.

### **Publication and Disclosure of Information**

F17. Information may be published or disclosed by the Authority for the following purposes:

F18. Sharing within Government.

- a. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom of Information requests.
- b. For these purposes, the Authority may share within Government any of the Tenderer's documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the Authority during this procurement.
- c. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F19. Sharing with Third Parties.

- a. Where required, the Authority will disclose on a confidential basis any information it receives from Tenderers during the tender process (including information identified by the Tenderer as Sensitive Information in accordance with the provisions of this ITT) to any Third Party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.

F20. Freedom of Information

- a. The Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA"). If the Authority receives a request under the FOIA to disclose any information provided during this procurement that a Tenderer has designated as confidential, the Authority will notify the relevant Tenderer as soon as reasonably practicable and consult with the Tenderer, and have regard to its views, in relation to determining whether any exemption from disclosure in accordance with the provisions of the FOIA may apply.
- b. The decision to disclose (or not to disclose), including information that is confidential, in response to a request under the FOIA is for the Authority to determine in its absolute discretion. The Authority shall further be responsible for determining in its absolute discretion whether any Information:
  - i. is exempt from disclosure in accordance with the provisions of the FOIA (including, but in no way limited to, Section 43 of the FOIA); or

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- ii. falls to be disclosed in response to either a request for information or a direction from the Information Commissioner, the First-tier Tribunal (Information Rights), the Upper Tribunal or a court.

F21. Publication under the Procurement Act 2023.

- a. For procurements covered by the Procurement Act 2023, the Authority may publish such information as it is required to disclose under that Act. Such disclosure shall be subject to the overriding public interest test set out in section 94 of the Procurement Act 2023. Any decision on disclosure shall be in the sole discretion of the Authority.

### Reportable Requirements

F22. Listed in the DEFFORM 47 Annex A (Offer) are the mandatory declarations. You must complete and attach the returns listed in the Annex and, where you select yes, you must attach the relevant information with the tender submission.

F23. Your Tender will be deemed non-compliant and excluded from the tender process if you fail to complete the Annex in full and attach relevant information where required.

### Russian and Belarusian Suppliers, Products and Services

F24. Except as set out in [PPN 007](#), the Authority will not be accepting Tenders that:

- a. contain any Russian / Belarusian products and/or services; and/or
- b. are linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian / Belarusian person or entity. Please note that this does not include companies:
  - i. registered in the UK or in a country with which the UK has a relevant international agreement with reciprocal rights of access in the relevant field of public procurement; and/or
  - ii. which have significant business operations in the UK or in a country the UK has a relevant international agreement with reciprocal rights of access in the relevant field of public procurement.

F25. Tenderers must confirm in writing that their Tender, including any element that may be provided by any part of the Contractor's supply chain, does not contain any Russian / Belarusian products and/or services.

F26. Tenderers must include provisions equivalent to those set out in this clause in all relevant Sub-Contracting Arrangements.

### Information and Other Matters

F27. This ITT and all other information, opinions and data, whether written or oral, made available to the Tenderers during the pre-qualification process and this procurement, including the information provided on the DSP (together the "Information") is provided to Tenderers for the sole purpose of assisting them to submit Tenders.

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F28. The Information has been provided by the Authority and has not been independently verified by the Authority, its advisers or any other person. Although the Information is provided in good faith, except where expressly provided on a reliance basis, it does not purport to be accurate, complete and exhaustive and the Authority, its ministers, employees, advisers, contractors, agents and any officers of any associated bodies accept no liability for any error or misstatement in, or omission from, the Information and, so far as permitted by law, any liability (for negligence or otherwise) of the Authority or any of its advisers, contractors, agents, officers, employees and any officers or employees of any associated bodies to the Tenderers and others in connection with the Information is hereby expressly disclaimed. No representation or warranty, express or implied is given with respect to the accuracy or completeness of this ITT, their contents, the Information or any oral or written communication in connection with the procurement or as to the achievement or reasonableness of (and no reliance should be placed on) any projections, targets, estimates or forecasts contained in this ITT or the Information. Summaries of documents contained in this ITT or made available to the Tenderers through the DSP should not be relied on and the final forms of such documents must be referred to for their full effect.

F29. The Information provided does not purport to be comprehensive or to contain all of the information that Tenderers need to submit Tenders. None of this ITT or the Information is intended to provide the basis of any investment decision and should not be considered as a recommendation by the Authority or any of its advisers to any recipient of this ITT.

F30. Without limiting any other provision of this ITT, to the extent permitted by law, the Authority will not be liable for any oral advice, representation or information given by the Authority or on behalf of it in relation to this procurement, whether given or made before or after the Tender Submission Deadline.

F31. The Authority undertakes no obligation to provide any additional information or to update this ITT, or to correct any inaccuracies which may become apparent.

F32. Without in any way limiting what a Tenderer does, before submitting a Tender, the Tenderers must:

- a. examine this ITT and all documents made available to them in writing by the Authority or any other person on behalf of the Authority to the Tenderers for the purpose of preparing their Tender;
- b. examine all other relevant information available on reasonable enquiry;
- c. obtain and consider all necessary information relevant to the risks, contingencies and other circumstances having an effect on their Tenders;
- d. satisfy themselves of the correctness and sufficiency of their Tenders having regard to these risks; and
- e. take such professional advice as is appropriate for a project of this type,
- f. and any failure to do these things or other things which the Tenderers are required to do under this ITT will not relieve a Tenderer of its obligation to perform the Contract should it be selected.

## Transfer of Undertakings

### F33 Applicability of TUPE

1. Your attention is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended and /or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, as amended from time to time. The Authority would be neither transferor nor transferee of the employees in the circumstances of any contract awarded as a result of this invitation, and it is your responsibility to consider whether or not TUPE applies to this re-let and to tender accordingly. Notwithstanding this, you will wish to note that it is the Authority's view that TUPE is likely to be applicable if this Invitation to Tender results in a Contract being placed, although the Authority shall not be liable for the opinion expressed above. In these circumstances the Authority will wish to satisfy itself that your proposals are responsibly based and take full account of your likely TUPE obligations.
2. If you have a contrary view to that of the Authority on the applicability of TUPE you are strongly encouraged to submit both a TUPE and non-TUPE tender, providing a full explanation to support your view. If the Authority is satisfied by your explanation, the non-TUPE tender will be considered, otherwise the tender conforming to the Authority's view will be considered.

### TUPE Information Provided for Tendering Purposes

3. **In order to obtain the TUPE information (Appendix 3 to the DEFFORM 47 - Schedule 11) in respect of the current employees, please message the Authority via the messaging function within the Defence Sourcing Portal (DSP).**  
This information may be updated prior to contract award in which event the short-listed tenderers will be given an opportunity to revise or confirm tendered prices
4. The information detailed at Appendix 3 has been obtained from the contractor currently undertaking this task. The accuracy and completeness of this information cannot be warranted by the Authority. It remains your responsibility to ensure that your tender takes full account of all the relevant circumstances of this contract re-let and tender accordingly. You are required to confirm when responding that you will not make any claim or demand or take any actions or proceedings against the Authority (nor seek to avoid any contract or seek any amendment to a contract placed with the contractor by the Authority) arising from or relating to the provision of the information, whether or not you are awarded a contract as a result of this Invitation to Tender. Failure to provide clear and unequivocal confirmation may result in your tender being deemed non-compliant.

F34.

### Third Party IPR - Confidentiality And Technical Assistance

1. It is proposed that information as used by the Authority relevant to the performance of any resultant Contract will be made available to the winning Tenderer exclusively for the performance of services specified under the Contract for the MOD.

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2. Any request for payment of licence fees for the use of information to be provided by the Authority under paragraph 1 should be referred to the Authority when submitting the Tender or responding to an offer of Contract from the Authority, and no agreement entered therefore without the consent of the Authority. You must exclude any proposed charges for access to or use of the information from the Tender price.

3. The Tenderer should make their own arrangements, as necessary, directly with any original supplier of equipment to be repaired or maintained under any resultant Contract for the provision of technical assistance and support. You must include the cost of securing any services necessary in the Tender price. You should include details of such arrangements when submitting your Tender or responding to an offer of Contract from the Authority.

4. In addition, the Tenderer, when tendering or responding to an offer of Contract from the Authority, shall provide to the Authority in writing:

a. details of arrangements they propose to make to maintain the confidentiality of information provided under paragraph 1;

b. details of any proposed use of information to be provided under the Contract otherwise for the exclusive performance of services under the Contract for the MOD and as currently carried out by the Authority, including any Intellectual Property Right known to the Tenderer which is not covered by paragraphs 1 to 3 above and which may be required for the purpose of tendering for or performing the Contract; and

c. a statement setting out full details of any licence or other agreement (whether royalty bearing or not) or legal restraint relating to any other Intellectual Property considered necessary for the performance of the proposed work. No payment for use of such Intellectual Property Rights will be allowed as a part of the Contract price or otherwise reimbursed by the Authority to the contractor unless it shall have been specifically agreed to by the Authority.

5. In the event of the Tenderer proposing to Sub-Contract for the purpose of any resultant Contract, they must notify Tenderers for Sub-Contracts of the same notices and instructions given for the main Contract by paragraphs 1 to 4 of this Condition of Tendering.

### F35: Options

The Authority requires option prices for Years one (1) and two (2). The Contractor must provide prices against the options. The option prices must be Firm Price for Option Year one (1) (not subject to variation) and Fixed Price for option year two (2) (subject to Indexation); Fixed prices relative to economic conditions and are subject to variation as provided for in Contract Condition 35. If your Tender is successful, you will be expected to supply / provide that option requirement(s) in Contract Condition 35. The Authority will not waive any rights under the said Contract Condition. The Authority reserves the right to seek competitive Tenders for the option requirement(s) detailed in Contract Condition 35.

## Ministry of Defence

## Tender Submission Document (Offer) – Ref Number ITT - 714600450

**To the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter called “the Authority”)**

The undersigned Tenderer, having read the ITT Documentation and ITT Material, offers to supply the Contractor Deliverables at the stated price(s), in accordance with any referenced drawings and/or specifications, subject to the Conditions of Tendering. It is agreed that only the Contract or any amendments issued by the Authority shall apply.

<b>Applicable Law</b>				
I agree that any Contract resulting from this competition shall be subject to English Law				Yes / No
<b>Total Value of Tender (excluding UK VAT)</b>				
£ .....				
WORDS .....				
<b>UK Value Added Tax</b>				
If registered for Value Added Tax purposes, insert:				
a. Registration No .....				
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....				
<b>Location of work (town / city) where Contract will be performed by Prime:</b>				
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue another page if required)				
Tier 1 Sub-Contractor Company Name	Town / city to be Performed	Contractor Deliverables	Estimated Value	SME Yes / No
<b>Mandatory Declarations</b> (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer):			<b>Tenderer's Declaration</b>	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, complete and attach DEFFORM 528.			Yes* / No	
Have you completed and attached a DEFFORM 711 – Notification of Intellectual Property Rights (IPR) Restrictions?			N/A	
Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract?			Yes* / No	

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Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed customs procedure to be used and an estimate of duties to be incurred or suspended?	Yes / No /N/A
Have you completed a Supplier Assurance Questionnaire (SAQ) on the link provided to the Supplier Cyber Protection Service, together with a Cyber Implementation Plan as appropriate? Have you attached the outcome to the SAQ?	Yes* / No
Have you read, signed and attached Appendix 5 to Schedule 12 Annex 1 Ethical Walls Agreement?	Yes / No
Have you read and acknowledged DEFFORM 532 and Personal Data Aspects Letter Annex B to Schedule 16?	Yes/No
Have you read and acknowledged the Security Aspects Letter (Appendix 2 to DEFFORM 47)	Yes/No
Have you completed and attached Pricing Schedule (Appendix 4 to DEFFORM 47)?	Yes/No
Have you confirmed that you have read and understood the TUPE considerations of this requirement, and accessed the TUPE data at Appendix 3 to the DEFFORM 47 (Schedule 11)?	Yes/No
Have you completed Form 1686 for Sub-Contracts?	Yes* / No/ N/A
Have you completed the compliance matrix / matrices?	Yes / No / N/A
Are you a Small Medium Sized Enterprise (SME)?	Yes / No
Have you and your Sub-Contractors registered with the Prompt Payment Code with regards to SMEs?	Yes / No
Have you completed and attached Tenderer's Sensitive Information form?	Yes* / No
If you are required to submit a Statement of Excludable Offences and you have not previously submitted a Statement of Excludable Offences within the last 12 months, or, if circumstances have changed, have you attached a revised version?	Yes* / No / N/A
Do the Contractor Deliverables, or any item provided in accordance with the Contract contain asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No
Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement?	Yes* / No
Do the Contractor Deliverables or any item provided in accordance with the Contract (including packaging) use substances that deplete the ozone layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as assimilated law, and as it applies in Northern Ireland directly	Yes* / No
Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer?	Yes / No / Not Required
Have you complied with the requirements of the Defence Safety Authority Regulatory Articles?	Yes / No / Not Required
Have you completed all Mandatory Requirements (as per paragraph F22) stated in this ITT?	Yes / No
*If selecting Yes to any of the above questions, attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	
<b>Tenderer's Declaration of Compliance with Competition Law</b>	



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We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether legally binding. In particular:

- a. the offered price has not been divulged to any Third Party;
- b. no arrangement has been made with any Third Party that they should refrain from tendering;
- c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion;
- d. no discussion with any Third Party has taken place concerning the details of either's proposed price; and
- e. no arrangement has been made with any Third Party otherwise to limit genuine competition.

We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.

We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.

We agree that the Authority may share the Contractor's information/documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government tender processes, including value for money and related purposes. We certify that we have identified any Sensitive Information in the Tenderer's Sensitive Information form (DEFFORM 539A).

**Dated this..... day of ..... Year .....**

**Signature:** **In the capacity of**

(Must be scanned original)

(State official position e.g. Director, Manager, Secretary etc.)

**Name:** (in BLOCK CAPITALS)

**Postal Address:**

**duly authorised to sign this Tender for and on behalf of:**

**Telephone No:**

**Registered Company Number:**

(Tenderer's Name)

**Dunn And Bradstreet number:**

## Information on Mandatory Declarations

### Notification of Foreign Export Control Restrictions

1. If, in the performance of the Contract, you need 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, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.
2. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant Contract, you must provide the following information in your Tender:

Whether all or part of any Contractor Deliverables are or will be subject to:

- a. a non-UK export licence, authorisation or exemption; or
- b. any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 6 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

3. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 6. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.
4. This does not include any Intellectual Property specific restrictions mentioned in paragraph 2.
5. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 6.
6. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the Contract.

### **Import Duty and Non-UK Tax**

7. United Kingdom (UK) legislation permits the use of various procedures to suspend customs duties.
8. For the purpose of this competition, for any deliverables not yet imported into the UK, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and/or suspended.
9. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate His Majesty's Revenue & Customs (HMRC) authorisations.
10. The Total Value of Tender should include all overseas and non-UK non-recoverable taxes that will be charged to the Authority, excluding UK Value Added Tax.

### **Cyber Risk**

11. Cyber risk has been considered and the Cyber Security Model resulted in a 'High' Cyber Risk Profile outcome. The Risk Assessment Reference is (RAR) is 250605A01. **The Contractor will need to complete a Supplier Assurance Questionnaire (SAQ) using the [SAQ Form](#) at link which must be returned to [UKStratComDD-CyDR-DCPP@mod.gov.uk](mailto:UKStratComDD-CyDR-DCPP@mod.gov.uk) and included with the tender response.**

### **Sub-Contracts Form 1686**

12. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. Form 1686 and further guidance can be found in [Industry Security Notice 2024/05 Subcontracting or Collaborating on Classified UK MOD Programmes](#).

### **Small and Medium Enterprises**

13. The Authority is committed to supporting the Government's Small and Medium-sized Enterprise (SME) policy, and we want to encourage wider SME participation throughout our supply chain. Our goal is that at least 25% of the Authority's spend should be with SMEs, either directly or through the supply chain. The Authority uses the Procurement Act 2023 interpretation of SME.
14. A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly for all procurements. All suppliers to the Authority and their Sub-Contractors are encouraged to make their own commitment and register with the Small Business Commissioner at <https://www.smallbusinesscommissioner.gov.uk/ppc/>. The successful Tenderer of a public contract must also comply with Section 73 of the Procurement Act 2023 – Implied payment terms in sub-contracts.

15. Suppliers are also encouraged to work with the Authority to support the Authority's SME Action Plan, however this is not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation. Information on the Authority's purchasing arrangements, our commercial policies and our SME Action Plan can be found at [Gov.UK](https://www.gov.uk) and on the Defence Sourcing Portal.

### **Tenderer's Sensitive Information**

16. You must complete the attached Tenderer's Sensitive Information form (DEFFORM 539A, SC1B Schedule 4 or SC2 Schedule 5) explaining which parts of your Tender you consider to be Sensitive Information (as defined in DEFCON 539). This includes providing a named individual who can be contacted with regard to FOIA and Environmental Information Regulations 2004 ("the EIR").
17. See paragraph F17 for reasons that the Authority may need to publish or disclose information. You should note that while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will, where practicable be given prior notification.

### **Electronic Purchasing**

18. Tenderers must note that use of the [Contracting, Purchasing and Finance \(CP&F\)](#) electronic procurement tool is a mandatory requirement for any resultant Contract awarded following this Tender. By submitting this Tender, you agree to electronic payment. You may consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant and excluded from the tender process.

### **Change of Circumstances**

19. If you are required to submit a Statement of Excludable Offences, and you have not previously submitted a Statement of Excludable Offences or your circumstances have changed, please select 'Yes' to the appropriate question on DEFFORM 47 Annex A and submit a Statement of Excludable Offences with your Tender.

### **Asbestos, Hazardous Items and Depletion of the Ozone Layer**

20. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' to the appropriate question on DEFFORM 47 Annex A and provide further details in your Tender

### **Defence Safety Authority (DSA) Requirements**

21. Tenderers are required to comply with any applicable DSA regulation. Tenderers must be able to demonstrate their compliance with all relevant DSA regulations.
22. Bank or Parent Company Guarantee

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You will be informed whether you are required to provide a Bank or Parent Company Guarantee. The Authority does not require a Bank or Parent Company Guarantee in response to this Invitation to Tender (ITT), however, the Authority reserves the right to request a Bank or Parent Company Guarantee at any point during the Tender process. If required and in the event that you are selected as the winning Tenderer, you must provide your Bank or Parent Company Guarantee (in the form of DEFFORM 24/24A as appropriate) during the standstill period. No Contract will be awarded until a suitable Bank or Parent Company Guarantee, as appropriate, is in place. Failure to provide a Bank or Parent Company Guarantee during the standstill period, will result in you being de-selected as the winning Tenderer. The Authority reserves the right to re-evaluate the Tenders, (if necessary) to take into account the absence of the de-selected Tenderer, enabling the Authority to establish the next winning Tenderer and award a Contract.

## Standardised Contracting Terms

### SC2 - Core Terms (PA23)

SC2 (Edn 04/25)

#### **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 the Contract or not.
- c. The Contractor warrants and represents, that:
  - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their 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 themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their 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 the winding-up of the company 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 they 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 the winding-up of the company 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 its nominated

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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 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 England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

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

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

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

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

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

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

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(2) Clause 40.b shall be amended to read:

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

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, 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 the 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 their agents to accept on their 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 the 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 the 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. Formal Amendments to the Contract**

- a. Except as provided in Condition 31 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
- (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used);
  - and
  - (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- c. Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
- (1) if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (SC2) or DEFCON 127. Where DEFCON 643 (SC2) is used, the Contractor shall make all appropriate arrangements with all its Subcontractors affected by the Change or Changes in accordance with clause 5 of DEFCON 643 (SC2); or
  - (2) if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).

## **Changes to the Specification**

- d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.
- e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

## **7. 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 7.
- 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

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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 (Formal Amendments to the Contract).

### **8. 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

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.

### **9. 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.

### **10. 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.

### **11. 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.

### **12. Transparency**

a. Notwithstanding any other term of the Contract, including Condition 13 (Disclosure of Information), the Contractor agrees that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.

b. The Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.

c. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable

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Performance Information, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in clauses 12.f to 12.j. Where the Authority publishes Transparency Information, it shall redact any Sensitive Information and, where reasonably practicable, consult with the Contractor on the proposed redactions prior to publication.

d. The Authority shall present information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed.

e. The parties agree that they will not disclose information in relation to the Contract in contravention of their obligations under data protection legislation. In this clause, "data protection legislation" has the same meaning as in the Data Protection Act 2018.

### **Publishable Performance Information**

f. Within three (3) months of the effective date of Contract the Contractor shall provide to the Authority for its approval (such approval shall not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of Schedule 9.

g. If the Authority rejects any draft Publishable Performance Information the Contractor shall submit a revised version of the relevant KPI Data Report for further approval by the Authority with five (5) business days of receipt of any notice or rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have an agreed version of the Publishable Performance Information.

h. The Contractor shall provide an accurate and up-to-date version of the KPI Data Report to the Authority for each quarter at the frequency referred to in the agreed Schedule 9.

i. Any dispute in connection with the preparation and/or approval of Publishable Performance Information, other than under clause 12.g, shall be resolved in accordance with the dispute resolution procedure provided for in the Contract.

j. The requirements of this Condition are in addition to any other reporting requirements in the Contract.

## **13. Disclosure of Information**

a. Subject to clauses 13.d to 13.i and Condition 12 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 their employees and Subcontractors, only to the extent

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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 their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. A Party shall not be in breach of clauses 13.a, 13.b, 13.f, 13.g and 13.h 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) 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. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;

(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) subject to clause 13.g below, on a confidential basis to a professional adviser,

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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 the Contract;

(5) subject to clause 13.g below, 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. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with clauses 13.f.(4) or 13.f.(5) above, the Authority will endeavour to provide the Contractor with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under clause 13.f.(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.

h. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

i. 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 their 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.

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

### **14. 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.

### **15. Change of Control of Contractor**

a. The Contractor shall notify the Representative of the Authority at the address given in clause 15.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing

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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

and emailed to: [DefComrcISSM-MergersandAcq@mod.gov.uk](mailto:DefComrcISSM-MergersandAcq@mod.gov.uk)

c. 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 the Effective Date of Contract.

d. 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 15.a. The Authority shall act reasonably in exercising its right of termination under this Condition.

e. If the Authority exercises its right to terminate in accordance with clause 15.d 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 15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

f. 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.

### **16. Environmental Requirements**

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

### **17. Contractor's Records**

a. The Contractor and their Subcontractors 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 their Subcontractors shall also permit access to relevant records

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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 17.a of this Condition, and subject to the provisions of Condition 13 (Disclosure of Information), 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) the termination of the Contract; or
  - (3) the final payment,
- whichever occurs latest.

### **18. 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 Day 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:
    - (1) 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
    - (2) 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.

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

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- 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 their 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**

#### **20. 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 their 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 20.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 they become 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.

#### **21. Marking of Contractor Deliverables**

- a. Each Contractor Deliverable shall be marked in accordance with the required particulars specified in Schedule 3 (Contract Data Sheet).
- b. Each ASSC shall be marked with a UII, to be affixed by way of a 2D data matrix label, in accordance with DEF-STAN 05- 132.
- c. Where the Contract requires a non-ASSC Contractor Deliverable to be marked with a UII, to be affixed by way of a 2D data matrix label, this shall also be in accordance with DEF-STAN 05-132.



- d. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables. Where a 2D data matrix label is affixed, it shall last for the life of a Contractor Deliverable.
- e. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- f. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, they shall be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 22 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

**22. 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 22.i to 22.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 22.i to 22.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied

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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 22.f and 22.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 their 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 LSOC SpSvcs--SptEng-Pkg1

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

[DESLSOC-SpSvcs-SptEng-Pkg-Multi@mod.gov.uk](mailto:DESLSOC-SpSvcs-SptEng-Pkg-Multi@mod.gov.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

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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 22.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 22.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 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 22.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 22.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, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 22.g.(1)(b).

(4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g.(1)(a) and 22.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

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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 22.I.
- (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
  - (g) respect of export trade packages;
  - (h) shelf life of item where applicable;
- 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.

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- 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 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 6 (Formal Amendments to the Contract).
- 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 17 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and

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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.

### **23. Plastic Packaging Tax**

a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.

b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.

c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.

d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.

e. In accordance with Condition 17 the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.

f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:

- (1) confirmation of the tax status of any Plastic Packaging Component;
- (2) documents to confirm that PPT has been properly accounted for;
- (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
- (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.

g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 23.f above is accurate.

h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.

i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

**24. Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables**

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

b. The Contractor shall provide to the Authority:

(1) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);

(2) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and

(3) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and/or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the Contractor, to allow safe use of the Article including, as a minimum, the name of that Substance.

c. For Substances, Mixtures or Articles that meet the criteria list in clause 24.b above:

(1) 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/safety information and forward it to the Authority and to the address listed in clause 24.i below; and

(2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.

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

e. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

f. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details in Schedule 6 of:

(1) activity; and

(2) the substance and form (including any isotope).

g. If the Substances, Mixtures or Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details in

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Schedule 6 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.b.(1) and 24.c.(1), any information arising from the provisions of clauses 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Point of Contact as specified in the Schedule 3 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).

i. So that the safety information can reach users without delay, the Authority shall send a copy 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)  
Spruce 2C, #1260,  
MOD Abbey Wood (South)  
Bristol BS34 8JH

(2) Emails to be sent to:

[DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk](mailto:DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk)

j. SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for OME are not to be sent to HSIS and must be held by the respective Authority Delivery Team.

Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances.

k. Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substances, Mixtures or Articles in Contractor Deliverables 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.

l. 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.

## 5. 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



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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 17 (Contractor's Records).

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

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

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

- (1) verify the forest source of the timber or wood; and
- (2) 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 (Formal Amendments to the 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 (Formal Amendments to the Contract).

I. 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 <https://www.forestryengland.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, the CofC shall be in English unless stated otherwise in the Contract. 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 and the CofC will clearly detail the Articles (quantities, part numbers, batch numbers, NSNs etc) that are contained in a specific delivery.

b. Each CofC shall be clearly identified as a conformity document and should include the wording "Certificate of Conformity" (or similar) in the title of the document to allow for easy identification..

c. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).

d. 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 and/or CP&F (Contracting, Purchasing and Finance) Purchase Order Number;
- (4) Details of any approved concessions (clearly linked to the relevant item);
- (5) Acquirer name and organisation;
- (6) Delivery address;
- (7) Contract Item Number from Schedule 2 (Schedule of Requirements);
- (8) Line item numbers when there is more than one line item on the CofC;
- (9) Description of Contractor Deliverable, including part number, specification and configuration status;
- (10) NATO Stock Number (NSN) (where allocated);
- (11) Identification marks, batch and serial numbers in accordance with the Specification;
- (12) Quantities;
- (13) A signed and dated statement by the Contractor's Authorised Personnel that the Contractor Deliverables comply with the requirements of the Contract and approved concessions. The signing of the CofC may be in the form of a signature or traceable stamp. The Contractor's Authorised Personnel shall mean a competent

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person appointed and authorised by the Contractor to sign a CofC.

(14) Exceptions or additions to the above are to be documented.

e. 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.d. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Condition 17 (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 their 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 27.a 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 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;

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- (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:

on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or

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 the 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

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Contractor Deliverables contains Counterfeit Materiel, it shall:

- (1) notify the Contractor in writing of its suspicion and reasons therefore;
- (2) where reasonably practicable, 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) at its discretion, provide the Contractor with a sample of the Contractor Deliverable or consignment for validation or testing purposes by the Contractor (at the Contractor's own risk and expense);
- (4) 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
- (5) 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.

d. 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 and 30.b (Rejection), and provide written notification to the Contractor of the rejection.

e. In addition to its rights under 30.a and 30.b (Rejection), where the Authority has determined 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).

f. Where the Authority intends to exercise its rights under clause 30.e the Contractor may, subject to the agreement of the Authority (and at the Contractor's own risk and expense and subject to any reasonable controls and timeframe agreed), arrange, 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 reasonably satisfied does not contain Counterfeit Materiel.

g. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.e, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.f but the Contractor fails to do so within the period agreed and subject to clause 30.k, 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, at the discretion of the Authority, be shared with the Contractor; and/or
- (4) to recover the appropriate, attributable, and reasonable costs incurred by the

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Authority in respect of testing, storage, access, and/or disposal of it from the Contractor;

and exercise of the rights granted at clauses 30.g.(1) to 30.g.(3) shall not constitute acceptance under Condition 29 (Acceptance).

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

i. The Authority shall not use a retained Contractor Deliverable or consignment other than as permitted in clauses 30.c – 30.k.

j. The Authority may report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

k. 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 clauses 30.c – 30.k except:

(1) in relation to the balance that may accrue to the Contractor in accordance with clause 30.h; or

(2) 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.(5). 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 (Formal Amendments to the 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 their 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.

## **Licenses 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 Contractor is responsible for applying for and maintaining that licence.
- b. Without prejudice to the 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 obtain Licences from the UK or a foreign government for the performance of the Contract.
- c. The Contractor shall consult the Authority as soon as reasonably practicable if a Licence is required from a foreign government. Where the Contractor is the applicant for obtaining Licences, they shall ensure that when Restrictions apply to all or part of any Contractor Deliverables (which for the purposes of this Condition) shall also include information, technical data, software and Services) unless otherwise agreed with the Authority, they shall identify in the application:
- (1) the end user as: The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereinafter "UK MOD"); and
  - (2) the end use as: For the Purposes of UK MOD; and
  - (3) include in the submission for the Licence a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- d. The Contractor shall take expeditious action to arrange the application for the foreign Licences required to import or export any Materiel not supplied by or on behalf of the Authority or perform any Services for which a Licence is required by a foreign government; this includes, but is not limited to, compliance with the ITAR, EAR, FMS and any applicable UK-US agreements. The Contractor shall include the dependencies for the Licence application, grant, and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where a risk management plan is not required under the Contract the Contractor shall inform the Authority's representative accordingly.
- e. During the term of the Contract and for up to two years after Contract completion, the Authority may make a written request to the Contractor to seek a variation to the conditions of a foreign Licence to enable the Authority to re-export or re-transfer a licenced or authorised Materiel from the UK and/or to a non-licenced third party. If the Authority makes such a request, it will consult the Contractor before making a determination on which party is best placed to seek a variation. Where the Contractor is best placed to seek a variation:

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(1) the Contractor shall, expeditiously file an application to seek a variation of the applicable Licence in accordance with the procedures of the foreign government or raise their objection to the request. Where the Contractor has an objection to the variation request, the Parties shall meet within 5 Business Days to resolve the issue; should they fail to do so, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export or import control subject matter experts; and

(2) the Authority shall provide sufficient information, certification, documentation, and other reasonable assistance necessary to support the application to seek a variation.

f. Where the Authority determines that it is best placed to make such a request for variation, the Contractor shall provide sufficient information, certification, documentation, and other reasonable assistance 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 price for this service based on the cost of providing it.

h. The Contractor shall use all reasonable endeavours to incorporate in each relevant Subcontract equivalent terms regarding foreign export and/or import controls 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 promptly report that fact and the circumstances to the Authority.

i. The Authority shall use reasonable endeavours to identify any Restrictions that apply to Materiel to be provided to the Contractor as Government Furnished Assets.

j. 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 is subject to Restrictions the Authority shall provide a completed DEFFORM 528 (and a copy of any applicable Licence, where available) to the Contractor as soon as reasonably practicable and no later than 30 days prior to the delivery of such Materiel to the Contractor. If the DEFFORM 528 provided is found to be inaccurate or incomplete the Authority shall deliver a new DEFFORM 528 as soon as reasonably practicable.

k. Where Restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to clause 33.j or any of the information provided by the Authority in any DEFFORM 528 is inaccurate or incomplete the Parties shall promptly agree on the best course of action and implement it to mitigate the impact of the incomplete or inaccurate disclosure under the terms of Condition 6 (Formal Amendments to the Contract), or as may otherwise be provided by the Contract. If there is no alternative or appropriate mitigation available, the Authority may terminate the Contract in accordance with Condition 42 (Termination for Convenience), as appropriate and as referenced in the Contract. Providing the Contractor has taken such steps as are reasonable to mitigate the impact the Contractor shall be relieved of their obligation to perform those elements of the Contract affected by the Restrictions or provision of incorrect or incomplete information.

l. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to any foreign Licence including those that impose or will impose Restrictions. During the term of the Contract the Contractor shall inform the Authority of any foreign Licence and/or any Restrictions not already disclosed at the Effective Date of Contract or relevant amendment. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 34 (Third Party Intellectual Property – Rights



and Restrictions).

m. The Contractor shall notify the Authority of all, or any part of the Contractor Deliverables identified within clause 33. l, by submitting a DEFFORM 528 or other mutually agreed alternative format as soon as reasonably practicable and no less than 30 days prior to delivery of the Contractor Deliverables. Such notification shall include an update on the validity of all previous information submitted and shall include any Restrictions (not already disclosed to the Authority) notified to the Contractor by any of their Subcontractors, suppliers, or other third parties. The Contractor, within 10 Business Days (or such longer period as shall have been agreed in writing by the Parties) of such notification shall submit a proposal to the Authority outlining actions to mitigate the impact of such Restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal of or modification to the Restrictions, or to obtain appropriate authorisations from the relevant foreign government. The Authority shall inform the Contractor within 10 Business Days (or such longer period as shall have been agreed in writing by the Parties) of receipt of the proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with Condition 6 (Formal Amendments to the Contract) or as otherwise provided by the Contract to implement the proposal.

n. If the Contractor is unable to perform their obligations under the Contract due to the Restrictions notified in accordance with clauses 33.l and 33.m and the Restrictions are not capable of being removed, modified, or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion amend the Contract in accordance with Condition 6 (Formal Amendments to the Contract) or as otherwise provided by the Contract or terminate the Contract. Except where clause 33.o applies, termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and those due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, shall 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 Condition 40 (Dispute Resolution). Providing the Contractor has taken such steps as are reasonable to mitigate the impact the Contractor shall be relieved of their obligation to perform those elements of the Contract directly affected by the Restrictions or provision of incorrect or incomplete information.

o. Where the Contractor knew or ought reasonably to have known that the Contract Deliverables were subjected to the Restrictions notified in accordance with clauses 33.l and 33.m, either at the Effective Date of Contract or at the date of submission of the most recent previous DEFFORM 528 to the Authority in accordance with clause 33.m, and failed to notify the Authority or the information disclosed was inaccurate or incomplete, the termination of the Contract will be in accordance with Condition 43 (Material Breach) and the provisions of clause 33.n with respect to termination will not apply.

p. For a period of up to 2 years from the completion of the Contract, and in response to a specific written request from the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any change to the Restrictions applicable to any Materiel provided under the Contract by issuing an updated DEFFORM 528 to the Authority.

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

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the

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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 their obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or 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 1949;
- (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.

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- 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, their 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

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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;
- 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, their 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 their 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 clause 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 36.b 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 36.a, the Authority will consider and verify that invoice without undue delay.

c. The Authority shall pay the Contractor any sums due to be paid under the invoice before the end of the period of 30 days beginning with the day on which a valid and undisputed invoice is received by the Authority in respect of the sum or, if later, the day on which the payment falls due in accordance with the invoice.

d. Where the Authority fails to comply with clause 36.b 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 36.c 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 the 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 and other Taxes**

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar 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 their 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 their 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, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling, they 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 they take 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 tax purposes. In that event, it is the Contractor's responsibility to ensure the Contract Price captures this tax.
- 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 non-UK input taxes). However, these input taxes will be allowed where they were included in the Contract Price and 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 the 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 10 (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 their obligations, duties or liabilities under the Contract.

b. Where the Contractor enters into a Subcontract, they shall cause a term to be included in the 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 the Subcontract 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

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- (4) requiring the Subcontractor to include in any Subcontract which it awards, provisions having the same effect as clauses 39.b.(1) to 39.b.(3) and to procure that the counterparty to that contract include provisions having the same effect as clauses 39.b.(1) to 39.b.(4).
- c. The Contractor shall not agree with the Subcontractor a payment date for a valid and undisputed invoice of more than 30 days.

### **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 them or their 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



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- (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 their 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 their debts if:
  - (a) they have 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 them; 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 they are 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 they have 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 them or on their behalf, or to their 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.

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- d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of 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 their behalf;
    - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.
- f. Recovery action taken against any person in His 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.

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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,

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

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

- (a) all such unused and undamaged materiel; and
- (b) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

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

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

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
- (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
- 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**

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- 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 their 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.

### **Subcontracting**

### **45. Subcontracting with suppliers on Debarment List**

- a. The Contractor shall not Subcontract (and shall procure that none of their Subcontractors shall Subcontract) any part of the Contract to a supplier whose name appears on the Debarment List, without the prior written consent of the Authority. If the Contractor or any of their Subcontractors enter into a Subcontract with a supplier whose name appears on the Debarment List, without prior approval, this shall constitute a material breach of the Contract.
- b. Where the Contractor enters into a Subcontract they shall cause a term to be included in such Subcontract requiring the counterparty to that Subcontract to include in any Subcontract which they award, provisions providing for termination of the contract and notification obligations contained within clause 45.c, in the event either party to the Subcontract is added to the Debarment List.
- c. Where a Subcontractor is added to the Debarment List, at any level of the supply chain, during the term of the Contract, the Contractor shall notify the Authority within five (5) Business Days of the Subcontractor being added, or made aware, and the Authority shall reasonably determine (in its sole discretion) whether it requires the contract with the Subcontractor to be terminated.
- d. Where the Authority requires a Subcontract to be terminated in accordance with clause 45.c, the Contractor shall procure that the Subcontract is terminated as soon as is reasonably practicable. Such termination shall not relieve the Contractor of the performance of their obligations under the Contract and the Authority shall not be liable for any costs, liabilities, expenses, damages and/or losses arising from, or in connection with, such termination.

**Additional Conditions**

**46. The project specific DEFCONS and DEFCON SC variants that apply to the Contract are:**

Number	Edition	Title
076	11/22	Contractor's Personnel At Government Establishments
501	10/21	Definitions and Interpretations
515	06/21	Bankruptcy and Insolvency
516	04/12	Equality
518	02/17	Transfer
520	10/23	Corrupt Gifts and Payments of Commission
522	04/25	Payment and Recovery of Sums Due
532B*	12/22	Protection of Personal Data
537	12/21	Rights of Third Parties
550	02/14	Child Labour and Employment Law
611	12/22	Issued Property
657A	02/25	Termination in accordance with the Procurement Act 2023
658	10/22	Cyber
659A	02/24	Security Measures
660	12/15	Official Sensitive Security Requirements
694	04/25	Accounting for Property of the Authority
703 **	06/21	Intellectual Property Rights- Vesting in the Authority

\*Note 1 to DEFCON 532B: DEFFORM 532 Personal Data Particulars and Personal Data Aspects Letter are at detailed at Schedule 16.

\*\* Note 2 to DEFCON 703: The Contractor shall not incorporate any background material within the Results. Should any such material be included within the Results, the Contractor hereby grants (or shall procure the grant) to the Authority a royalty-free, worldwide, non-exclusive, perpetual and irrevocable licence (with a right to sub-licence the same to third parties) to use, copy, and disclose confidentially, in whole or in part, any background material which are not the Results but which are necessary to enable the Authority to use the Results in any manner whatsoever.

**47. The special Conditions that apply to the Contract are:**

**SC2 - ITT - Annex A - Limitation of Contractors Liability**

**1.LIMITATIONS ON LIABILITY**

**Definitions**

1.1 In this Condition [1] the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

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

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

(1) UK GDPR;

(2) DPA 2018; and

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

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

‘DPA 2018’ means the Data Protection Act 2018;

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

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in [cross refer to service credit regime in the contract];

“Term” means the period commencing on [the commencement date / the date on which this Contract is signed / the date on which this Contract takes effect] and ending [on the expiry of x years /on x date] or on earlier termination of this Contract.

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

**Unlimited liabilities**

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### 1.2 Neither Party limits its liability for:

- 1.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 1.2.2 fraud or fraudulent misrepresentation by it or its employees;
- 1.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 1.2.4 any liability to the extent it cannot be limited or excluded by law.

### 1.3 The financial caps on liability set out in Clauses 1.4 and 1.5 below shall not apply to the following:

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

1.3.1.1 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and Condition 34 (Third Party IP – Rights and Restrictions);

1.3.1.2 the Contractor's indemnity in relation to TUPE at Schedule [(TUPE)];

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

1.3.2.1 the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts);

1.3.2.2 the Authority's indemnity in relation to TUPE under Schedule [(TUPE)];

#### 1.3.3 breach by the Contractor of DEFCON 532A (SC2) joint controller provisions set out at Additional Conditions (Clause 46) and Data Protection Legislation; and

#### 1.3.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

#### 1.3.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 (SC2) or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clauses 1.4 and/or 1.5 below.

## Financial limits

### 1.4 Subject to Clauses 1.2 and 1.3 and to the maximum extent permitted by Law:

#### 1.4.1 [throughout the Term] the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

1.4.1.1 in respect of DEFCON 76 (SC2) Two hundred and fifty thousand pounds (£250,000) in aggregate.

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1.4.1.2 in respect of Condition 43b Two million, four hundred and ninety thousand pounds (£2,490,000) in aggregate.

1.4.1.3 in respect of DEFCON 611(SC2) Eight thousand pounds (£8,000) in aggregate; and

1.4.1.4 in respect of condition 28d [N/A]

1.4.2 without limiting Clause 1.4.1 and subject always to Clauses 1.2, 1.3 and 1.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with reference to service credit/performance provisions and any other relevant provisions, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be Two million, seven hundred & forty eight pounds (£2,748,000) in aggregate.

1.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 1.4.1 and 1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 1.4.1 and 1.4.2 of this Contract.

1.5 Subject to Clauses 1.2, 1.3 and 1.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

1.6 Clause 1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

### **Consequential loss**

1.7 Subject to Clauses 1.2, 1.3 and 1.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

1.7.1 indirect loss or damage;

1.7.2 special loss or damage;

1.7.3 consequential loss or damage;

1.7.4 loss of profits (whether direct or indirect);

1.7.5 loss of turnover (whether direct or indirect);

1.7.6 loss of business opportunities (whether direct or indirect); or

1.7.7 damage to goodwill (whether direct or indirect),

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

1.8 The provisions of Clause 1.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a



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### Default by the Contractor:

- 1.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
  - 1.8.1.1 to any third party;
  - 1.8.1.2 for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
  - 1.8.1.3 relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 1.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- 1.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
- 1.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- 1.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (SC2) and 611 (SC2);
- 1.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- 1.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 1.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 1.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

### Invalidity

- 1.9 If any limitation or provision contained or expressly referred to in this Condition [1] is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition [1].

### **Third party claims or losses**

1.10 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and Condition 34 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

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

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

### **No double recovery**

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

### **48. The processes that apply to the Contract are:**

Travel and Subsistence process as detailed in Statement of Requirements (SOR) (Schedule 15) and Authority T&S Policy at Annex I to SOR.

## **General Conditions**

### **Third Party IPR Authorisation**

#### **AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

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.

## SC2 Schedules

### SC2 - 1 - Schedule 1 - Definitions of Contract (PA23)

<b>Article</b>	means, in relation to clause 24 and Schedule 6 only, an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;
<b>Articles</b>	means (except in relation to Schedule 10) 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>Assets Subject to Special Controls (ASSC)</b>	means a Contractor Deliverable which is: <ul style="list-style-type: none"> <li>a. subject to the United States International Traffic In Arms Regulations (ITAR);</li> <li>b. subject to the 600 series of the United States Export Administration Regulations (EAR); or</li> <li>c. classified as Attractive to Criminal and Terrorist Organisations (ACTO), meaning that it includes material which represents an immediate risk to Defence personnel or the public; or which is considered as attractive to criminal and terrorist organisations;</li> </ul>
<b>ASSC Indicator</b>	means for Contractor Deliverables subject to ITAR, a United States Munitions List (USML) or for Contractor Deliverables subject to the 600 series of the EAR, an Export Control Classification Number (ECCN);
<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 7;
<b>Business Day</b>	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
<b>Central Government Body</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification

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Guide, as published and amended from time to time by the Office for National Statistics:

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

<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 ( Formal Amendments to the 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 Deliverables</b>	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any

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

### **Control**

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

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

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

### **Covered Procurement**

shall have the meaning as in section 1 of the Procurement Act 2023;

### **CPET**

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

### **Crown Use**

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

### **Dangerous Goods**

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

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

### **DBS Finance**

means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);

### **DEFFORM**

means the MOD DEFFORM series which can be found at <https://www.kid.mod.uk>;

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<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 upon which both Parties have signed the Contract;
<b>Evidence</b>	means either: a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
<b>Firm Price</b>	means a price (excluding VAT) which is not subject to variation;
<b>First-Tier Sub-Contractor</b>	means a Sub-contractor directly engaged by the Contractor to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract;
<b>FLEGT</b>	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
<b>Government Furnished Assets (GFA)</b>	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the

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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;

### **Licence**

means, in relation to clause 33 only, import licence, export licence or other import or export related authorisation, agreement, exception or exemption, including (but not limited to) the export licences required by the United States under the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR) and Foreign Military Sales (FMS), or those required as a result of any applicable UK-US agreements;

### **Legal and Sustainable**

means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;

### **Legislation**

means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, or any exercise of Royal Prerogative;

### **Lower-Tier Sub-Contractor**

means any Sub-contractor other than any First-Tier Sub-Contractor at any lower level of the supply chain engaged to provide Contractor Deliverables wholly or substantially for the

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purpose of performing (or contributing to the performance of) the whole or any part of the Contract;

<b>Materiel</b>	means, in relation to clause 33 only, information, technical data, and items, including all goods, components of goods and software;
<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>Mixture</b>	means a mixture or solution composed of two or more substances;
<b>MPAS Registered Organisation</b>	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
<b>NATO</b>	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
<b>Notices</b>	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Overseas</b>	shall mean non UK or foreign;
<b>Packaging</b>	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
<b>Packaging Design Authority (PDA)</b>	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;



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<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Plastic Packaging Components</b>	shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;
<b>PPT</b>	means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;
<b>PPT Legislation</b>	means the legislative provisions set out in Part 2 and Schedule 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;
<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>Publishable Performance Information</b>	means any of the Information in Schedule 9 (KPI Data Report) as it relates to Key Performance Indicator where it is expressed as publishable in the table in Schedule 9; and which does not constitute Sensitive Information;
<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. 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>Restrictions</b>	means, in relation to clause 33 only, end use or end user restrictions including (but not limited to) restrictions on transfers to third parties or

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disclosure to individuals based on their nationality, residency status and/or employment status;

### **Robust Contractor Deliverables**

shall mean Robust items as described in Def Stan 81-041 (Part 2)

### **Safety Data Sheet**

has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);

### **Schedule of Requirements**

means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;

### **Sensitive Information**

means the Information listed in the completed Schedule 5 (Contractor's Sensitive Information), being Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication, being Information which is either: 1) exempt from disclosure (in the Authority's sole determination) in accordance with Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR); or 2) Information which has been notified to the Authority by the Contractor under a Covered Procurement as sensitive commercial Information and the Authority determines (in its sole discretion) that such Information: i) constitutes a trade secret; or ii) would be likely to prejudice the

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commercial interests of the Contractor if it were published or disclosed, and there is an overriding public interest in withholding its publication; or 3) Information which is exempt from disclosure on national security grounds;

### **Short-Rotation Coppice**

means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

### **Specification**

means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, and shall include any document or item which, individually or collectively is referred to in Schedule 2 (Schedule of Requirements). The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification;

### **STANAG4329**

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

### **Subcontract**

means a Contract substantially for the purpose of performing (or contributing to the performance of) all or any part of a public contract and 'Subcontractor' shall be interpreted accordingly;

### **Substance**

means a chemical element and its compounds in the natural

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	state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;
<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, except for any Sensitive Information;
<b>Unique Item Identifier (UII)</b>	means a unique and unambiguous identifier that distinguishes an item from all other like and unlike items, consisting of: <ul style="list-style-type: none"><li>a. NATO Stock Number (NSN);</li><li>b. NATO Commercial and Government Entity (NCAGE) code;</li><li>c. ASSC Indicator, where applicable;</li><li>d. serial number; and</li><li>e. part number;.</li></ul>
<b>Virgin Timber</b>	means Timber and Wood-Derived Products that do not include Recycled Timber.

Where project specific DEFCONs are included under Condition 45 definitions shall be in accordance with DEFCON 501.

**SC2 - 2 - Annex to Schedule 1 (PA23)**

**Additional Definitions of Contract iaw. Conditions 46 - 48 (Additional Conditions)**

**SC2 - Schedule 2 - Schedule of Requirements (PA23)**

Tables 1, 2, 3 and 4 below will be populated upon Contract Award to stipulate the winning Tenderer's price breakdown:

Table 1 - Outlines the Total Firm Price for Mobilisation.

Mobilisation Firm Price Ex VAT

Table 2 – Outlines the daily rates which, for information purposes only, contribute to the total Firm Price.

Contractor Grade	Daily Rate Y1	Daily Rate Y2	Daily Rate Option Yr 1	Daily Rate Option Yr 2

Table 3 - Outlines the Total Firm price for Contract Delivery. Option Year One (1). Option Year Two (2) is Fixed Price subject to Indexation.

Year 1 & Year 2 Firm Price Ex VAT	Option Year 1 Firm Price Ex VAT	Option Year 2 Fixed Price Ex VAT

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The Contract Price shall be split into equal payments, paid monthly in arrears as per the payment plan at Appendix 4

Table 3 Monthly Payment Schedule:

Year 1 Monthly Payment Date	Year 1 Monthly Payment in £ Ex VAT	Year 2 Monthly Payment Date	Year 2 Monthly Payment in £ Ex VAT
23 Oct 2025		23 Oct 2026	
23 Nov 2025		23 Nov 2026	
23 Dec 2025		23 Dec 2026	
23 Jan 2026		23 Jan 2027	
23 Feb 2026		23 Feb 2027	
23 Mar 2026		23 Mar 2027	
23 Apr 2026		23 Apr 2027	
23 May 2026		23 May 2027	
23 Jun 2026		23 Jun 2027	
23 July 2026		23 Jul 2027	
23 Aug 2026		23 Aug 2027	
23 Sept 2026		23 Sept 2027	

Option Year 1 Monthly Payment Date	Option Year 1 Monthly Payment in £ Ex VAT	Option Year 2 Monthly Payment Date	Option Year 2 Monthly Payment in £ Ex VAT
23 Oct 2027		23 Oct 2028	
23 Nov 2027		23 Nov 2028	
23 Dec 2027		23 Dec 2028	
23 Jan 2028		23 Jan 2029	
23 Feb 2028		23 Feb 2029	
23 Mar 2028		23 Mar 2029	
23 Apr 2028		23 Apr 2029	
23 May 2028		23 May 2029	
23 Jun 2028		23 Jun 2029	
23 Jul 2028		23 Jul 2029	
23 Aug 2028		23 Aug 2029	
23 Sep 2028		23 Sep 2029	

**SC2 - Schedule 3-Contract Data Sheet (PA23)**

<b>General Conditions</b>
<b>Condition 2 – Duration of Contract:</b>  <p>The Contract expiry date shall be 23 September 2027</p>
<b>Condition 4 – Governing Law:</b>  <p>Contract to be governed and construed in accordance with 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>Solicitors Appointed:</p>
<b>Condition 7 – Authority’s Representatives:</b>  <p>The Authority’s Representatives for the Contract are as follows:</p> <p>Commercial: (as per Annex A to Schedule 3 (DEFFORM 111))</p> <p>Project Manager: (as per Annex A to Schedule 3) (DEFFORM 111))</p>
<b>Condition 18 – Notices:</b>  <p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: (as per Annex A to Schedule 3 (DEFFORM 111))</p> <p>Contractor:</p> <p>Notices can be sent by electronic mail?</p> <p>Yes</p>
<b>Condition 19.a – Progress Meetings:</b>  <p>The Contractor shall be required to attend the following meetings:</p> <p>Progress Meetings Details: As detailed in Statement of Requirements (Schedule 15)</p>



**Condition 19.b – Progress Reports:**

The Contractor is required to submit the following Reports:

Progress Reports: As detailed in Statement of Requirements (Schedule 15)

**Supply of Contractor Deliverables**

**Condition 20 – Quality Assurance:**

Is a Deliverable Quality Plan required for this Contract?

No

Other Quality Requirements: ISO 9001:2015 certification or equivalent to be in place at Contract Award. The Authority reserves the right to request evidence of the required Certification.

**Condition 21 – Marking of Contractor Deliverables:**

Special Marking requirements:

Not Applicable

**Condition 24 - Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables:**

A completed Schedule 6 (Hazardous and Non-Hazardous Substances, Mixture or Articles Statement), and if applicable, UK REACH compliant 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 – [DESTECH-QSEPEnv-HSISMulti@mod.gov.uk](mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk)

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

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

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

to be Delivered by the following date: [ ]

**Condition 26 – Certificate of Conformity:**

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

No

Applicable to Line Items:

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

No

Applicable to Line Items:

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

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

Not applicable

Special Delivery Instructions:

Not Applicable

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:

Not applicable

Special Delivery Instructions:

Not Applicable

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

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

Not Applicable

Consignee details (in accordance with Condition 22):

Not Applicable

**Condition 30 – Rejection:**

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

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

Self-to-Self Delivery required? (delete as appropriate)

No

If required, Delivery address applicable:

Not Applicable

**Pricing and Payment**

**Condition 35 – Contract Price:**

All Schedule 2 line items (Mobilisation, Contract Years one (1) and two (2) and Option Year one (1) )shall be FIRM Price other than those stated below:

Option Year two (2) shall be a Fixed Price subject to Indexation by formula - Statement of Requirements (Schedule 15) refers.

**Termination**

**Condition 42 – Termination for Convenience:**

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

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specified here:

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

See Annex A to Schedule 3 (DEFFORM 111)

**SC2 - Schedule 4 - Contract Change Control Procedure (i.a.w. Clause 6b) - PA23**

**Schedule 4 - Contract Change Control Procedure (i.a.w. clause 6.d) for Contract No: 714600450**

**Authority Changes**

1. The Authority shall be entitled to propose any change to the Contract (a "Change") or (subject to Clause 2) Changes in accordance with this Schedule 4.
2. Nothing in this Schedule shall operate to prevent the Authority from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

**Notice of Change**

3. If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "Authority Notice of Change") on the Contractor.
  4. The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clauses 7 to 9 (inclusive).
  5. The Contractor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):
    - a. would, if implemented, require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable law relevant to such delivery; and/or
    - b. would, if implemented, cause any existing consent obtained by or on behalf of the Contractor in connection with their obligations under the Contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Contractor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
    - c. would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract;
- and:
- d. the Contractor notifies the Authority within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c providing written evidence for the Contractor's reasoning on the matter; and

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e. further to such notification:

(1) either the Authority notifies the Contractor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Contractor that the Authority disputes the Contractor's notice under Clause 5.d) it is determined in accordance with Condition 40 (Dispute Resolution), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c; and

(2) (where the Authority either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change) to remove the Contractor's grounds for refusing to implement the relevant Change under Clauses 5.a, 5.b and/or 5.c within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after:

i) the date on which the Authority notifies in writing the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c; or

ii) the date of such determination.

6. The Contractor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

### **Contractor Change Proposal**

7. As soon as practicable, and in any event within:

a. (where the Contractor has not notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5) fifteen (15) Business Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contract shall have received the Authority Notice of Change; or

b. (where the Contractor has notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c in accordance with Clause 5 and:

(1) the Authority has agreed with the Contractor's conclusion so notified or it is determined under Condition 40 (Dispute Resolution) that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c and the Authority has made sufficient adjustments to the relevant Authority Notice of Change (and issued a revised Authority Notice of Change(s)) to remove the Contractor's grounds for refusing to implement the relevant Change(s) under Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contractor shall have received such revised Authority Notice of Change; or

(2) the Authority has disputed such conclusion and it has been determined in accordance with Condition 40 (Dispute Resolution) that the relevant Change(s) is/are not a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c) fifteen (15) Business Days (or such other period as the parties shall have agreed

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(both parties acting reasonably) having regard to the nature of the Change(s)) after the date of such determination,

the Contractor shall deliver to the Authority a Contractor Change Proposal. For the avoidance of doubt, the Contractor shall not be obliged to deliver to the Authority a Contractor Change Proposal where the Contractor notifies the Authority, and the Authority agrees or it is determined further to such notification in accordance with Clause 5, that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 5.a, 5.b and/or 5.c.

8. The Contractor Change Proposal shall comprise in respect of each and all Change(s) proposed:

- a. the effect of the Change(s) on the Contractor's obligations under the Contract;
- b. a detailed breakdown of any costs which result from the Change(s);
- c. the programme for implementing the Change(s);
- d. any amendment required to this Contract as a result of the Change(s), including, where appropriate, to the Contract Price; and
- e. such other information as the Authority may reasonably require.

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

### **Contractor Change Proposal – Process and Implementation**

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

- a. evaluate the Contractor Change Proposal; and
- b. where necessary, discuss with the Contractor any issues arising (and (in relation to a Change(s) proposed by the Authority) 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 shall have agreed in writing) after receipt of such modification, submit an amended Contractor Change Proposal.

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

- a. either indicate its acceptance of the Change Proposal by issuing a DEFFORM10B in accordance with Condition 6 (Formal Amendments to the Contract), whereupon the Contractor shall promptly sign and return to the Authority the Contractor's DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, such Condition and implement the relevant Change(s) in accordance with such proposal; or

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b. serve Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such notice of change shall have no further effect)

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

13. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 11a. and then subject only to the terms of the Contractor Change proposal so accepted.

### **Contractor Changes**

14. If the Contractor wishes to propose a Change or Change(s), they shall serve a Contractor Change Proposal on the Authority. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Clauses 8 to 13 (inclusive).



**SC2 - Schedule 5 - Contractor's Commercial Sensitive Information Form  
(i.a.w condition 13) - PA23**

**Contract No:** 714600450

Contract No: 714600450
Cross Reference(s) to location of Sensitive Information:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters:  Name:  Position:  Address:  Telephone Number:  Email Address:

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**SC2 - Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract (PA23)**

**Schedule 6 - Hazardous Substances, Mixtures and Articles in Contractor Deliverables Supplied under the Contract (i.a.w. Condition 24): Data Requirements for Contract No: [      ]**

**Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement by the Contractor**

Contract No: [      ]

Contract Title: [      ]

Contractor: [      ]

Date of Contract: [      ]

\* To the best of our knowledge there are no hazardous Substances, Mixtures or Articles in the Contractor Deliverables to be supplied. Yes/No; or

\* To the best of our knowledge the hazards associated with Substances, Mixtures or Articles in the Contractor Deliverables to be supplied under the Contract are identified in the Safety Data Sheets or UK REACH Communication attached in accordance with Condition 24. Yes/No

Contractor's Signature: [              ]

Name: [              ]

Job Title: [              ]

Date: [              ]

\* delete as appropriate

.....

To be completed by the Authority

Domestic Management Code (DMC): [              ]

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NATO Stock Number: [       ]

Contact Name: [       ]

Contact Phone Number: [       ]

Contact Address: [       ]

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)

Spruce 2C, #1260

MOD Abbey Wood (South)

Bristol BS34 8JH

Email: [DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk](mailto:DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk)

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**SC2 - Schedule 7 - Timber and Wood - Derived Products Supplied under the Contract - PA23**

**Timber and Wood- Derived Products Supplied under the Contract: Data Requirements for Contract No: [ ]**

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>
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]

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**SC2 - Schedule 8 - Acceptance Procedure (i.a.w. condition 29) - PA23**

**Acceptance Procedure: i.a.w. condition 29 and the criteria outlined in Schedule 15-  
Statement of Requirements for Contract No: 714600450**

**SC2 - Schedule 9 - Publishable Performance Information (PA23)****Schedule 9 - Publishable Performance Information - Key Performance Indicator Data Report (i.a.w. Condition 12) for Contract No: 714600450**

Serial	Performance Standard	Performance Indicator	Target (The prescribed timeline is outlined within the SOR)	Performance Measure	Financial Deductions Y/N **Any financial deductions will be taken from the subsequent monthly payment following the instance of non-performance
1	Contractor Performance (publishable)	In accordance with the SOR, the Contractor shall ensure that Lessons Contractors are meeting deadlines for the delivery of work, meeting the specification and timeline as allocated by respective Line Management and/or as directed by formal 1* and 2* Governance Boards. This includes the Mobilisation activities as outlined in the SOR.	Delivery as per the prescribed timeline.	Good – Contractual Target (95%)	N
			1-7 days after the prescribed timeline.	Approaching Target (90-94%)	Y - 2% of monthly invoice.
			8-14 days after the prescribed timeline.	Requires Improvement (85-89%)	Y - 4% of monthly invoice.
			15 days or more after the prescribed timeline.	Inadequate (<84%)	Y - 6% of monthly invoice.
2	Social Value (publishable)	In accordance with D7 of the SOR, the Contractor shall deliver a written report to the Authority on a quarterly basis, outlining measures taken within that period to achieve the mission.	Update report delivered as per prescribed timeline.	Good – Contractual Target (95%)	N.
			Update report delivered 1-7 days after the prescribed timeline.	Approaching Target (90-94%)	Y - 2% of monthly invoice.
			Update report delivered 8-14 days after the prescribed timeline.	Requires Improvement (85-89%)	Y - 4% of monthly invoice.
			Update report delivered 15 days or more after the prescribed timeline.	Inadequate (<84%)	Y - 6% of monthly invoice.

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3	Governance: Reporting (Publishable)	The Contractor shall ensure that reporting measures set out in the SOR at Deliverable 3: (attendance at quarterly progress meetings), are complied with by all staff required otherwise agreed by the Authority).	100% compliance with the reporting obligations.	Good – Contractual Target (95%)	N
			1 meeting missed by the Contractor.	Approaching Target (90-94%)	Y - 2% of monthly invoice.
			2 meetings missed by the Contractor.	Requires Improvement (85-89%)	Y - 4% of monthly invoice.
			More than 2 meetings missed by the Contractor.	Inadequate (<84%)	Inadequate – 6% of monthly invoice.
4	Knowledge Transfer (Publishable)	In accordance with D9, the Contractor shall ensure that Lessons Contractors deliver the knowledge transfer activity and as outlined in the Exit Management Plan, which is to be delivered within 3 months of Contract Award.	Update report delivered as per prescribed timeline.	Good – Contractual Target (95%)	N
			Update report delivered 1-7 days after the prescribed timeline.	Approaching Target (90-94%)	Y - 2% of monthly invoice.
			Update report delivered 8-14 days after the prescribed timeline.	Requires Improvement (85-89%)	Y - 4% of monthly invoice.
			Update report delivered 15 days or more after the prescribed timeline.	Inadequate (<84%)	Y – 6% of monthly invoice.
5			All replacement Lessons Contractors	Good – Contractual Target	N

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	Replacement Contractors (Non-publishable)	Where a replacement Lessons Contractor is required by the Authority due to a foreseeable event, i.e. resignation, the Authority should be informed at the earliest opportunity and a new Contractor sourced in line with the agreed notice period of 3 months.  Financial deductions are based on the cost of working days lost due to a replacement not being provided.	(when requested) are available to begin by the conclusion of the 3 month notice period		
			Replacement Lessons Contractors (when requested) are available to begin within 10 working days after the 3 month notice period .	Approaching Target	Y – 100% of the Total Cost of any working days the Contractor is unavailable. Total Cost is calculated by taking the total Firm Price for the year / number of working days in the year x number of days the Contractor is unavailable
			Replacement Lessons Contractors (when requested) are available to begin within 11-19 working days after the 3 month notice period	Requires Improvement	Y – 100% of the Total Cost of any working days the Contractor is unavailable. Total Cost is calculated by taking the total Firm Price for the year / number of working days in the year x number of days the Contractor is unavailable
			Replacement Lessons Contractors (when requested) are available to begin after 20 working days following the 3 month notice period.	Inadequate	Y – 100% of the Total Cost of any working days the Contractor is unavailable. Total Cost is calculated by taking the total Firm Price for the year / number of working days in the year x number of days the Contractor is unavailable
		Where a replacement Lessons Contractor is required by the Authority due to urgent and unforeseeable issues and 3 months' notice cannot be provided to the Authority (i.e. due to long-term illness), a replacement contractor should be sourced and ready to deliver as soon as possible.	All replacement Lessons Contractors are available to begin on the day of notification	Good – Contractual Target	N
			Replacement Lessons Contractors (when requested) are available to begin within 10 working days after the notification	Approaching Target	Y – 100% of the Total Cost of any working days the Contractor is unavailable. Total Cost is calculated by taking the total Firm Price for the year / number of working days in the year x number of



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		Financial deductions are based on the cost of working days lost due to a replacement not being provided.			days the Contractor is unavailable
			Replacement Lessons Contractors (when requested) are available to begin within 11-19 working days after the notification	Requires Improvement	Y – 100% of the Total Cost of any working days the Contractor is unavailable. Total Cost is calculated by taking the total Firm Price for the year / number of working days in the year x number of days the Contractor is unavailable
			Replacement Lessons Contractors (when requested) are available to begin after 20 working days following the notification	Inadequate	Y – 100% of the Total Cost of any working days the Contractor is unavailable. Total Cost is calculated by taking the total Firm Price for the year / number of working days in the year x number of days the Contractor is unavailable

**SC2 - Schedule 10 - Notification of Intellectual Property Rights (IPR)  
Restrictions (PA23) for Contract No. 714600450- Not Applicable.**

**Schedule 11**

**TRANSFER REGULATIONS**

**PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY**

**1 DEFINITIONS**

- 1.1 In this Schedule 11 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.
- 1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 11 Part 1 unless the context otherwise requires:

**"Data protection legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

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

(ii) the Data Protection Act 2018;

(iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

(iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party;

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

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

**"Previous Contractor"** means Mass Consultants Limited. There are no sub-contractors from whom employees may transfer;

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

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

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

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

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

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

## **2 PREVIOUS CONTRACTOR EMPLOYEES**

### **2.1 Employee Information**

- 2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 11 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

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

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.

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

## **2.3 Indemnities**

- 2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:
- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
  - (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
  - (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
  - (d) Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

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

**3.1 Contractor Indemnity**

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

**3.2 Post Transfer Reporting**

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

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

1. Pursuant to paragraph 2.1.1 of this Schedule 11 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:
  - 1.1 **Personal, Employment and Career**
    - a) Age;
    - b) Security Vetting Clearance;
    - c) Job title;
    - d) Work location;
    - e) Conditioned hours of work;
    - f) Employment Status;
    - g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
    - h) Details of training or sponsorship commitments;
    - i) Standard Annual leave entitlement and current leave year entitlement and record;
    - j) Annual leave reckonable service date;
    - k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
    - l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
    - m) Issue of Uniform/Protective Clothing;
    - n) Working Time Directive opt-out forms; and
    - o) Date from which the latest period of continuous employment began.
  - 1.2 **Performance Appraisal**
    - a) The current year's Performance Appraisal;
    - b) Current year's training plan (if it exists); and
    - c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;
  - 1.3 **Superannuation and Pay**

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- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

### 1.4 **Medical**

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

### 1.5 **Disciplinary**

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

### 1.6 **Further information**

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



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**Part B**

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

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

## PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

### 1. DEFINITIONS

1.1 In this Schedule 11 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 11 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 11 Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 11, Part 1, in this Schedule 11 Part 2 unless the context otherwise requires:

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

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

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

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

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

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

### 2. EMPLOYMENT

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

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

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the

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information listed in Appendix 1 to this Schedule 11 Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
- (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.

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

- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 11 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
- (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
- (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

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

2.1.4 Within 14 days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule [X] in respect of Subsequent Transferring Employees.

2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Schedule are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its

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employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.5, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

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

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

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Schedule 11 Part 2.

- 2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 11 Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

## 2.2 **Obligations in Respect of Subsequent Transferring Employees**

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:
- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 2.3 **Unexpected Subsequent Transferring Employees**

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:
- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
  - (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and

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- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
- (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b).
  - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
  - (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
    - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
    - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
    - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
  - (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
  - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
  - (vi) legal and other professional costs reasonably incurred;
- 2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

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

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

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

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

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

2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the

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Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

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

- 2.5.1 Pursuant to the terms of DEFCON 537, a New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

### 2.6 **General**

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule11 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.



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

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Schedule 11, the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
  - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
  - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
  
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership;
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
  
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
  
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

## PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

### Part A

1. Pursuant to paragraph 2.1.2 of this Schedule 11, part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

#### 1.1 **Personal, Employment and Career**

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

#### 1.2 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;

- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Pension Scheme Membership;
- h) For pension purposes, the notional reckonable service date;
- i) Pensionable pay history for three years to date of transfer;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- ki Percentage of pay currently contributed under any added years arrangements.

**1.3 Medical**

- a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and
- b) Details of any active restoring efficiency case for health purposes.

**1.4 Disciplinary**

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

**1.5 Further information**

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

**Part B**

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

- a) Employee's full name;
- b) Date of Birth

- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

## **PART C**

### **1.7 Information to be provided within 14 days following a Subsequent Transfer Date:**

#### **Performance Appraisal**

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

#### **1.7.2 Superannuation and Pay**

- a) Cumulative pay for tax and pension purposes;
- b) Cumulative tax paid;
- c) National Insurance Number;
- d) National Insurance contribution rate;
- e) Other payments or deductions being made for statutory reasons;
- f) Any other voluntary deductions from pay;

**Schedule 12 Ethical Walls**

Schedule 12 is attached as a standalone document to limit file size, however the document forms part of the Draft Contract Documents. The Authority requires Annex 1 to be completed and returned by the Contractor with the Tender Bid.

### **Schedule 13 Government Furnished Assets**

This Schedule sets out the equipment issued or made available to the Contractor in connection with this contract in accordance with Schedule 15. (Statement of Requirements) and DEFCON 611 – Issued Property. The Property covered in this Schedule relate to Government Furnished Assets (GFA) -tangible items loaned to a Contractor that the Contractor must manage and account for.

Schedule 13 is attached as a standalone document to limit file size, however the document forms part of the Draft Contract Documents.

#### **Schedule 14 Security Aspects Letter**

The Contractor shall comply with the requirements of the Authority Information and Communications Technology and Security Policy by adhering with the following Security Classifications in respect of the Security Aspects Letter attached as a standalone document to limit file size, however the document forms part of the Draft Contract Documents.

**Schedule 15 Statement of Requirements**, attached as a standalone document to limit file size, however the document forms part of the Draft Contract Documents and includes:

**attachments Annex's A-I to Statement of Requirements:**

Annex A. IWC Contractor Terms of reference

Annex B. PJHQ Contractor Terms of Reference.

Annex C. MSHQ Contractor Terms of Reference

Annex D. DEWH Contractor Terms of Reference.

Annex E. jHUB Contractor Terms of Reference.

Annex F. Contracted Lessons Support Structure and Relationships.

Annex G. Project Key User Requirements.

Annex H. Contractor Mandatory Training Requirements

Annex I Authority T&S Policy

Annex J Project Manager Terms of Reference

#### **Schedule 16 Personal Data**

DEFCON 532 details Personal Data Requirements. DEFFORM 532 and Annex A Personal Data Aspects Letter are attached as standalone documents to limit file size, however the documents form part of the Draft Contract Documents.

## Offer and Acceptance

### Offer and Acceptance

#### Contract 714600450 for the Provision of Lessons Capability

This Contract shall come into effect on the date of signature by both parties.

#### For and on behalf of the Contractor:

Name and Title	
Signature	
Date	

#### For and on behalf of the Secretary of State for Defence:

Name and Title	
Signature	
Date	



## Appendix - Addresses and Other Information

**1. Commercial Officer**

Name: To be completed prior to Contract Award

Address: Spur B2| Building 405|Westwells Road|  
MoD Corsham| Wiltshire SN13 9NR

Email: To be completed prior to Contract Award

**8. Public Accounting Authority**

1. Returns under DEFCON 694 should be uploaded to Government Furnished Equipment Industry Portal -

<https://assetmgmt.desdigital.mod.uk>2. Stock Certificates under DEFCON 694 should be returned to [DBSFin-FAADMT-AiiTeam@mod.gov.uk](mailto:DBSFin-FAADMT-AiiTeam@mod.gov.uk)3. For all general queries contact your Delivery Team or [DBSFin-FAADMT-AiiTeam@mod.gov.uk](mailto:DBSFin-FAADMT-AiiTeam@mod.gov.uk)4. For all portal queries contact [DESDigital-AAI-Artintel-Support@mod.gov.uk](mailto:DESDigital-AAI-Artintel-Support@mod.gov.uk)**2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)

Name: To be completed prior to Contract Award

Address: To be completed prior to Contract Award

Email: To be completed prior to Contract Award

Tel: To be completed prior to Contract Award

**9. Consignment Instructions**

The items are to be consigned as follows:

**3. Packaging Design Authority**

Organisation &amp; point of contact:

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

(

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH  
Air Freight Centre

IMPORTS ( 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ( 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

**B. JSCS**

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

JSCS Fax No. 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact

[UKStratCom-DefSp-RAMP@mod.gov.uk](mailto:UKStratCom-DefSp-RAMP@mod.gov.uk) in the first instance.**4. (a) Supply / Support Management Branch or Order Manager:**

Branch/Name:

(

**(b) U.I.N.****5. Drawings/Specifications are available from****11. The Invoice Paying Authority**

Ministry of Defence ( 0151-242-2000

	<p>DBS Finance Walker House, Exchange Flags      Fax: 0151-242-2809 Liverpool, L2 3YL      <b>Website is:</b> <a href="https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement">https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement</a></p>
<p><b>6. Intentionally Blank</b></p>	<p><b>12. Forms and Documentation are available through *:</b> 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) <b>Applications via fax or email:</b> <a href="mailto:Leidos-FormsPublications@teamleidos.mod.uk">Leidos-FormsPublications@teamleidos.mod.uk</a></p>
<p><b>7. Quality Assurance Representative:</b></p> <p>Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.</p> <p><b>AQAPS</b> and <b>DEF STANs</b> are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <a href="http://dstan.gateway.isg-r.r.mil.uk/index.html">http://dstan.gateway.isg-r.r.mil.uk/index.html</a> [intranet] or <a href="https://www.dstan.mod.uk/">https://www.dstan.mod.uk/</a> [extranet, registration needed].</p>	<p><b>* NOTE</b></p> <p><b>1.</b> Many <b>DEFCONs</b> and <b>DEFFORMs</b> can be obtained from the MOD Internet Site: <a href="https://www.kid.mod.uk/maincontent/business/commercial/index.htm">https://www.kid.mod.uk/maincontent/business/commercial/index.htm</a></p> <p><b>2.</b> 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.</p>

## 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.

### Buyer Contractual Deliverables

Name	Description	Due	Responsible Party
Obligation Condition 36.a - Register on CP&F	provide details for registration on CP&F		Buyer Organization
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 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
Obligation Condition 42.a -	Written notice of Termination of part or whole of contract		Buyer Organization

Termination			
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**Supplier Contractual Deliverables**

Name	Description	Due	Responsible Party
Obligation Condition 23.f.(6) And Condition 23.g.(1). (b) - Documents relating to design of new MLP Packaging	"All SPIS, new or modified, shall be uploaded by the on to SPIN. where the Supplier is the PDA and registered a list of all SPIS which have been prepared or revised against the Contract; and a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings shall be provided for upload"		Supplier Organization
Obligation Condition 24.d - Schedule 6 hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements	a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements)		Supplier Organization
Obligation Condition 23.e, 24.a, and 24.c - Safety Data Sheet	provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverable containing such.		Supplier Organization
Obligation Condition - Compliance with hazard reporting requirements for materials or substances are ordnance, munitions or explosives	in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.		Supplier Organization
Obligation Condition 26.a - Certificate of Conformity	Provide a Certificate of Conformity and any applicable Quality Plan		Supplier Organization
Obligation Condition 1.c.(2)	Notification of; Litigation, arbitration, administrative,		Supplier Organization

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- Notification of litigation	adjudication or mediation proceedings against itself or a Subcontractor		
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 DEFCON 91 (Edn 06/21) Clause - 5b - Software as required	A copy of the Software as is required for performance of obligations to be retained.		Supplier Organization
Obligation Condition 20.a - Attendance at Progress Meetings	attend progress meetings at the frequency or times specified in the contract		Supplier Organization
Obligation DEFCON 21 (Edn 06/21) 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 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
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 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 25.c - Source of Timber and Wood	If requested Evidence that the Timber and Wood-Derived Products supplied to the Authority comply with the requirements of clause 25.a or 25.b or both.		Supplier Organization
Obligation Condition 16.a - Change of	Written Notification of any intended, planned or actual change in control of the		Supplier Organization

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Control of Contractor	Contractor, including any Sub-contractors.		
Obligation Condition 20.b - Progress Reports	submit progress reports at the times and in the format specified in the contract		Supplier Organization
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