



Ministry
of Defence



DE&S Policy Secretariat

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Defence Equipment & Support
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MOD Abbey Wood
Bristol BS34 8JH

Reference: FOI2024/04082

29 May 2024

Dear [REDACTED]

Thank you for your email of 07 March 2024, requesting the following information:

*Reference: Contract for the provision of Overseas Deployable Food Procurement
Reference: BIP52540175 Contract Start Date: 01 October 2017 Contract End Date: 30
September 2022 Awarded Supplier: Ecolog International*

*In relation to the above contract, please provide a copy of Terms & Conditions of the
Contract.*

*Please confirm details of any planned or awarded Contract Extension Notices relating to
the above Contract that would extend the Contract beyond 30 September 2024, which
is the final Contract End Date, taking account of the 2 Contract extensions referred to in
the Contract Award Notice.*

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOI Act).

A search for the information has now been completed within the Ministry of Defence (MOD), and I can confirm that information in scope of your request is held. The information identified relating to your request is attached at Annexes A and B.

It has proved necessary to withhold some information in accordance with qualified exemptions of the FOI Act. Some of the information within Annex B would aid in the identification of deliveries of food to specific locations and has been withheld under qualified exemptions S26(1)(a) and (b) (Defence) and S38(1)(a) and (b) (Health and Safety).

Section 26 concerns information which if disclosed would, or would be likely to, prejudice the defence of the British Islands or of any colony, and prejudice the capability, effectiveness or security of any relevant forces. Section 38 concerns information which, if disclosed, would, or would be likely to endanger the safety, physical or mental health of any individual.

Some of the commercially sensitive information in Annex A relates to commercial arrangements between the parties such as milestone payments and claim thresholds, which has been withheld under qualified exemption Section 43(2) (Commercial Interests). Section 43 concerns information which if disclosed would or would likely prejudice the commercial interests of any person (including defence contractors and the public authority holding it).

As these exemptions are qualified, it was necessary to undertake a Public Interest Test to determine whether the balance for withholding the information outweighs that for disclosure. General arguments in favour of release were that full disclosure would demonstrate the MOD's commitment to openness and transparency; and make the UK Government more accountable to the electorate. The FOI Act also contains a presumption for release. However, releasing information that would aid in the identification of food deliveries to military bases overseas could aid adversaries planning theft, infiltration, disruption, sabotage or other malevolent acts against those delivering and receiving the food and would endanger the safety of the delivery personnel and the security and safety of those working at the delivery sites. Releasing the sensitive information on the commercial arrangements between the parties in this contract would damage the relationship between the contractors and the MOD, have a negative impact on the positions of the contractors within the commercial marketplace, damage the reputation of the MOD and have a negative impact on future competitions.

Given the arguments described above, on balance, it was determined that the information should be withheld under exemptions S26(1)(a) and (b) (Defence), S38(1)(a) and (b) (Health and Safety) and S43(2) (Commercial Interests). The level of prejudice against release of this exempted information has been set at "would be likely to".

It has proved necessary to withhold some information in accordance with absolute exemption Section 40(2) (Personal Information). S40(2) of the FOI Act provides that personal data of an individual is exempt if its disclosure would breach any of the data protection principles in the Data Protection Act 1998. The MOD considers that the information withheld consists of personal data and that disclosure would constitute unfair and unlawful processing. This is an absolute exemption and does not require a public interest test.

Under Section 16 (Advice and Assistance) I must inform you that during the review of the Terms and Conditions to contract DFP/001 attached at Annex A it was determined that the Expiry Date of the contract given at paragraph A4. a. (3) of 30 September 2022 is in error; I can advise you that the correct Expiry Date is 30 September 2024. I can also advise you that a search was conducted for any planned or awarded Contract Extensions Notices beyond 30 September 2024, and I can confirm that no information in scope of your request is held.

If you have any queries regarding the content of this letter, please contact this office in the first instance. If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.gov.uk). Please note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at <https://ico.org.uk/>.

Yours sincerely,

DE&S Policy Secretariat

Attachments:

Annex A: Deployable Food Programme (DFP) Team Schedule 3: Terms and Conditions

Contract No: DFP/001 For: Overseas Deployable Food

Annex B: Annex A to Schedule 3 DFP/001

PART 2

Contract: DFP/001	Change / Request No.
CONTRACTOR QUOTATION:	
<p>Quotations should be provided in accordance with the requirements in the request for change or quotation in Part 1.</p> <p>Please ensure any information provided on appended documents are marked with the unique Change / Quotation Request Number above.</p>	
<p>Proposed Delivery Date(s)</p> <p>or</p> <p>Proposed Date Change(s) become effective.</p>	
<p>(Contractor)</p> <p>Signed:</p> <p>Print Name:</p> <p>Date:</p>	

PART 3

Contract: DFP/001	Change / Request No.
AUTHORITY INSTRUCTION TO PROCEED:	
The Authority hereby gives approval for the Contractor to commence work on the Change or Quotation Request specified in accordance with the agreement between the Parties at Part 1 and Part 2.	
(Authority Commercial Officer)	
Signed:	
Print Name:	
Date:	
Internal use only	
RAC:	UIN:

Notes on completion

Each change is to be categorised as Minor or Major as defined below:

Minor Change – shall be changes that have a minor impact upon the performance and/or overall price of the Contract. e.g Temporary Overseas Location Agreements, changes to Contractor Deliverable Plans, or minor changes to Product ranges.

Major Change – shall be changes that have a major impact upon the performance and/or overall price of the Contract. e.g Introduction of new services.

Each change whether categorised as Minor or Major is to be allocated a timescale for implementation as defined below:

Urgent Changes – shall be changes which shall be progressed in an accelerated timescale e.g agreement of Part 1 in three (3) Business Days or less, Completion of Part 2 in five (5) Business Days or less, review and completion of Part 3 in five (5) Business Days or less.

Routine Changes shall be all changes which do not require the accelerated timescales stipulated under Urgent Changes. Both Parties shall endeavour to progress the Change Request Proforma for Routine Changes in the following timescales; Agreement of Part 1 in five (5) Business Days, Completion of Part 2 in fifteen (15) Business Days or less, Review and Completion of Part 3 in fifteen (15) Business Days or less.

ANNEX B – ADDITIONAL CONDITIONS TO BE INCLUDED IN RELEVANT SUBCONTRACTS

Appendix 1 to Annex B – Export Licence (i.a.w. clause B10.g)

1. In this condition the following words and expressions shall have the meanings set respectively against them:
 - a. "Agreement" means this Subcontract;
 - b. "Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
 - c. "Contract" means Contract No DFP/001 between the Authority and the Contractor;
 - d. "Contractor" means [insert name of prime contractor];
 - e. "First Party" means [insert name of purchaser];
 - f. "Second Party" means [insert name of supplier].
2. In this condition, "foreign" and "overseas" shall be understood from the position of the Authority and be regarded as "non-UK".
3. The Second Party shall notify the First Party promptly if the Second Party becomes aware that all or part of any article or service (including Information and software) to be delivered under the Agreement is or will be subject to a non-UK export licence, authorisation or exemption or any other related transfer control that imposes or will impose end use, end user, re-export or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon nationality, affecting the Authority, the Contractor or both. This does not include the Intellectual Property-specific restrictions of the type referred to in condition A30 (Third Party Intellectual Property – Rights and Restrictions) of the First Party's conditions of Contract.
4. If requested by the First Party, the Second Party shall give the First Party a summary of every existing or expected licence and restriction referred to in clause 3 and any related obligation or restriction to the extent that they place an obligation or restriction upon the First Party or the Authority with which the First Party or the Authority must comply including, to the extent applicable to such obligations or restrictions:
 - a. the exporting nation, including the export licence number (where known);
 - b. the article or service (including software and Information) affected;
 - c. the nature of the restriction and obligation;
 - d. the authorised end use and end users and other parties;
 - e. any specific restrictions on access by third parties, or by individuals based upon their nationality, to the articles or to anything Delivered or used in the performance or fulfilment of the services; and
 - f. any specific restrictions on re-transfer or re-export of the articles or of anything Delivered or used in the performance or fulfilment of the services.

The Second Party shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the First Party or the Authority must comply.

5. When an export licence is required from a foreign government for the performance of the Agreement, the Second Party shall promptly consult with the First Party on the licence requirements and, where the Second Party is the applicant for the licence:
 - a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be Delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:
 - (1) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and
 - (2) the end use as: For the Purposes of HM Government;

- b. include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the [*insert name of the Contractor*] and the Ministry of Defence of the United Kingdom";
- c. include in the submission the information that the First Party (and any intermediary parties in the supply chain, as applicable) and the Contractor will be recipients and users of the items, including information, for the performance of the Contract.
6. If the information required under clauses 3 and 4 has been provided previously to the First Party by the Second Party, the Second Party may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 3 and 4.
7. If the Second Party becomes aware of any changes in the information notified previously under clause 3, 4 or 6 that would affect the Contractor's or the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Second Party shall notify the First Party promptly of the change.
8. If the Second Party or any subcontractor in the performance of the Agreement needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Second Party or that subcontractor. The First Party will liaise with its purchaser to enable the Authority to provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regards to any defence or security issue that may arise.
9. Where the Agreement performance requires the export of items for which a foreign export licence is required, the Second Party shall include the dependencies for the export licence application, grant and maintenance in the Agreement risk register and in the risk management plan for the Agreement, with appropriate review points. Where there is no requirement under the Agreement for a risk management plan the Second Party shall submit an Export Licence Plan for agreement with the First Party.
10. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request that is transmitted to the Second Party by the First Party, the Second Party shall, or procure that the Second Party's Subcontractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no such objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority. The First Party shall provide information, certification and other documentation necessary to support the application for the requested variation that it has received. A fair and reasonable charge for this service based on the cost of providing it will be borne by the Authority.
11. Where the Second Party subcontracts work under the Agreement, which is likely to be subject to foreign export control, the Second Party shall use reasonable endeavours to incorporate in each subcontract the same terms as set out in these clauses 1 - 14. Where it is not practicable to include these said terms, the Second Party shall report that fact and the circumstances to the First Party.
12. Where the First Party provides materiel (information and items, including software) to enable the Second Party to perform the Agreement, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in clause 3:
- a. the First Party may, or at the request of the Second Party undertake to, give the Second Party a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Second Party's ability to perform the Agreement including, to the extent applicable to the Second Party's performance of the Agreement:
- (1) the exporting nation, including the export licence number (where known);
 - (2) the items or information affected;
 - (3) the nature of the restriction and obligation;
 - (4) the authorised end use and end users;
 - (5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
 - (6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.
- b. This will not include Intellectual Property-specific restrictions of the type mentioned in

condition A30 (Third Party Intellectual Property – Rights and Restrictions) in relation to the First Party's conditions of Contract instead of the Contractor.

c. The Second Party and its subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the First Party.

13. The Second Party shall notify the First Party immediately if it is unable for whatever reason to abide by any restriction advised by the First Party to the Second Party under clause 12.

14. Where restrictions are advised by the First Party to the Second Party under clause 12, the First Party and the Second Party shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Agreement by the Second Party, then the First Party shall consult with the Second Party on alternative solutions and the terms of the Agreement shall be amended to give effect to the agreed solution. If no alternative solution satisfying the essential terms of the Agreement is agreed by the Parties then the First Party shall have the right to terminate the Agreement. Termination under these circumstances will be in accordance with the principles of condition F2 (Termination for Convenience) of the First Party's conditions of Contract.

15. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority has undertaken to provide the Second Party with all reasonable assistance to facilitate the granting of an export licence by a foreign Government in respect of performance of the Agreement.

Appendix 2 to Annex B – Contractors on Deployed Operations (CONDO) (iaw Schedule 3 Annex H)

Definitions and Interpretation

1. In this condition the following words and expressions shall have the meanings set respectively against them:
- a. "Agreement" means this subcontract;
 - b. "Arms" means any weapon, which, for the avoidance of doubt, excludes anything to be used for the purpose of performing the Contract, this Agreement and any Subcontract;
 - c. "Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
 - d. "Authority to Deploy" means the Authority's formal written authority for the Contractor to Deploy;
 - e. "CAA" means a CONDO Applicable Area, being an OA or a specific area identified by the Authority as CONDO applicable.
 - f. "CONDO" means Contractors on Deployed Operations, being contractors providing Articles or Services or both outside the British Isles within an CAA as part of the civilian component supporting UK armed forces;
 - g. "Contract" means Contract No DFP/001 between the Authority and the Contractor;
 - h. "Contractor" means [insert name of prime contractor];
 - i. "Deploy" means bringing the Contractor, the Contractor's Employees, its Subcontractors and the Subcontractor's Employees under the administration and control of the Authority, which, for the avoidance of doubt, includes the Second Party and the Second Party's Employees, and which will take place:
 - i.on entering a Government Establishment for transit to the CAA; or
 - ii.on entering the CAA at the nominated entry point; or
 - iii.on reporting to the Representative of the Authority when already in the CAA,and "Deployed" shall be construed accordingly;
 - j. "Deployment" means the period during any act of preparing, moving and initial setting up of personnel and equipment to enable the delivery of Services within a location identified in CONDO Form 2 issued in accordance with the Authority's Def Stan 05-129 (Issue 5), their presence within that location and their subsequent recovery or redeployment;
 - k. "Expected Work Locations" means the locations in the CAA specified in the Contract, this Agreement and any Subcontract;
 - l. "Expected Modes of Transport" means the modes of transport to be used in the CAA for the transportation of the Contractor, the Contractor's Employees, its Subcontractors, the Subcontractor's Employees and LRWs, which, for the avoidance of doubt, includes the Second Party, the Second Party's Employees and LRWs, specified in the Contract, this Agreement and any Subcontract;
 - m. "First Party" means [insert name of purchaser, i.e. the legal entity that is placing the Agreement on the supplier];
 - n. "Government Establishment" means all Government sites including Headquarters Buildings, Her Majesty's Ships or Vessels or Service Stations;
 - o. "Local Military Commander" means the senior UK military person within a specific geographical area who is responsible for discipline, security and administration of that area and who for the purposes of this condition shall be a Representative of the Authority;
 - p. "LRWs" means Locally Recruited Workers, being workers who are engaged by the Second Party or by its Subcontractors and who normally reside in the country or countries in which the contracted Services are being performed;
 - q. "OA" means an Operations Area, being an area of land, sea and airspace outside the British Isles, but excluding the PJOBS and Germany unless a PJOB is included within an OA due to specific operational circumstances, defined by the Authority and in which a joint UK operational commander

(for a joint operations area), or a single service operational commander (for a single service operations area), plans and conducts military operations or exercises to accomplish a specific mission;

r. "PJOB" means a Permanent Joint Operating Base;

s. "Representative of the Authority" has the meaning given to it in the Contract, Schedule 1 (Definitions and Abbreviations);

t. "Second Party" means [insert name of supplier];

u. "Second Party's Employees" means those employees of the Second Party, being UK nationals and TCNs, but excluding LRWs, who are Deployed to the CAA in connection with the performance of the Contract, this Agreement and any Subcontract;

v. "Subcontract" means any subcontract entered into by the Second Party or, where appropriate, by a Subcontractor, which requires a Subcontractor to Deploy to the CAA in connection with the performance of the Contract, this Agreement and any subcontract;

w. "Subcontractor" means a subcontractor at any level of contracting with a Subcontract;

x. "Subcontractor's Employees" means those employees of any Subcontractor, being UK nationals and TCNs, but excluding LRWs, who are Deployed to the CAA in connection with the performance of the Contract, this Agreement and any Subcontract;

y. "TCN" means third country national, being an individual who is not a UK national.

2. In this condition the term "procure" shall be interpreted as requiring the Second Party to use all reasonable efforts to cause the occurrence of the event or outcome concerned, provided that the Second Party shall remain responsible to the First Party to the full extent of its obligation in relation to that event or outcome if that event or occurrence does not occur.

Subcontracts

3. If the Second Party enters into any Subcontract, the Second Party shall incorporate into any such Subcontract the terms set out in this condition.

4. The Authority may enforce against the Second Party any provision conferring a benefit on the Authority contained in clauses 1 – 31 of this condition and neither the First Party nor the Second Party shall be entitled to exclude such right of the Authority.

5. Subject always to the Second Party complying with the terms of clauses 1 – 31 of this Condition, the Second Party may enforce against the Authority any provision of Annex H to Schedule 3 of the Contract conferring a benefit upon Subcontractors and neither the Authority nor the First Party shall be entitled to exclude such right of the Second Party.

Authority to Deploy

6. The Second Party shall not and shall procure that the Second Party's Employees, its Subcontractors and the Subcontractor's Employees do not move into or within the CAA in connection with the performance of the Contract, this Agreement or any Subcontract until the Contractor has:

a. provided the Authority with all required information for the completion of Part 3 of CONDO Form 1 and CONDO Form 2, as provided in the Authority's Def Stan 05-129 (Issue 5);

b. received the Authority's Authority to Deploy in CONDO Form 2, issued as provided in the Authority's Def Stan 05-129 (Issue 5);

c. confirmed that the Second Party's Employees and the Subcontractors' Employees have completed the CONDO related training specified by the Authority;

d. confirmed that the Second Party's Employees and the Subcontractors' Employees are medically and dentally fit to Deploy and to undertake the tasks to which they are assigned, including being properly immunised;

e. provided the Authority with Form T-SL-DES01, completed as provided in the Authority's Def Stan 05-129 (Issue 5) in respect of the Second Party's Employees and its Subcontractor's Employees;

f. confirmed to the Authority, after receiving confirmation from the Second Party, that the Second Party has received a signed Form T-SL-DES01 and notified the Second Party's Employees and Subcontractor's Employees of their status as civilians subject to service discipline and their respective nominated Commanding Officer in the CAA;

g. received confirmation that the Second Party's Employees and its Subcontractor's

Employees have been security cleared to the levels required by the Authority as stated in the Contract, this Agreement and any Subcontract for the particular tasks;

h. confirmed receipt by the Second Party of an appropriate identity card or TCN card issued by the Authority in respect of each individual listed in CONDO Form 2; and

i. confirmed that the Contractor has undertaken appropriate risk assessments in relation to the Expected Work Locations and the Expected Modes of Transport, which support the Deployment;

and the Contractor has notified the First Party and the First Party has notified the Second Party that he may move into or within the CAA in connection with the performance of the Contract, this Agreement and any Subcontract.

The Authority's Right to Withhold, Withdraw, Move and Remove

7. The Authority may at any time and from time to time for any operational reason which the Authority in its absolute discretion shall determine:

a. withhold or withdraw Authority to Deploy;

b. move or require the removal of the Second Party or a Subcontractor from its current location to a location determined to be appropriate by the Authority in taking reasonable steps for their safety;

c. move or require the removal of any of the Second Party's Employees, its Subcontractors' Employees or LRWs from their current location to a location determined to be appropriate by the Authority in providing protection or in response to the Second Party's Employees, its Subcontractors' Employees or LRWs not acting in accordance with clause 17. The Second Party shall, as soon as reasonably practicable, move or remove any Second Party's Employee, Subcontractors' Employee or LRW whom the Authority requires to be moved or removed.

8. Where practicable and subject to operational constraints, the Authority shall inform the Contractor of its intentions prior to moving the Second Party's Employees, the Subcontractor's Employees and LRWs in accordance with clause 7. Where the Authority moves the Second Party's Employees, Subcontractor's Employees and LRWs in accordance with clause 7 without informing the Contractor, the Authority shall, as soon as reasonably practicable within operational constraints, notify the Contractor of the location to which the Second Party's Employees, the Subcontractor's Employees and LRWs have been moved.

9. The Authority shall not be obliged to give reasons for taking any action in accordance with clause 7 but may, in its sole discretion, indicate its reasons.

10. Notwithstanding the provisions of clause 9, in the event that the Second Party is involved in any employment claim or dispute arising in connection with any action taken by the Authority under clause 7, the Authority shall, where reasonably practicable, provide to the Contractor, the First Party or the Second Party as appropriate any relevant information that the Second Party may reasonably request for the purpose of addressing any such claim or dispute, except any such information the provision of which would be contrary to the interests of national security, in breach of a confidentiality or contractual obligation of the Authority, contrary to a statutory requirement or Government policy or as otherwise reasonably specified by the Authority.

The Authority's right to move between Expected Work Locations

11. The Authority may at any time and from time to time move the Second Party's Employees, its Subcontractor's Employees and LRWs between Expected Work Locations using the Expected Modes of Transport to undertake the tasks specified in the Contract, this Agreement and any Subcontract. Where the Authority moves the Second Party's Employees, its Subcontractor's Employees and LRWs between Expected Work Locations for periods of longer than 24 hours, the Authority shall, where practicable and where this has been requested by the Second Party, inform the Contractor prior to moving the Second Party's Employees, the Subcontractor's Employees and LRWs or, where this is not practicable or has not been requested by the Second Party, as soon as reasonably practicable within operational constraints.

The First Party's Obligations

12. If the Authority provides to the Contractor an operational specific medical warning notice providing information, supplementing that provided by the Foreign and Commonwealth Office, on medical issues specific to the CAA the First Party shall provide any such information that it receives to the Second Party.

The Second Party's Obligations

Personnel

13. The Second Party shall ensure that the Second Party's Employees, and shall procure that its Subcontractor's Employees, are medically fit and dentally fit to Deploy and to undertake the tasks to which they are assigned including, taking into account any notices issued under clause 12, being appropriately immunised.

14. The Second Party shall provide to the First Party all information necessary in respect of the Second Party's Employees and its Subcontractor's Employees for the completion of Part 3 of CONDO Form 1 and CONDO Form 2 and to enable the Contractor to properly complete CONDO Form 4A, CONDO Form 4B and Form T-SL-DES01 (as provided in the Authority's Def Stan 05-129 (Issue 5)) no later than 48 hours prior to the Second Party being Deployed.

15. The Second Party shall provide to the First Party all information necessary in respect of the Second Party's Employees and its Subcontractor's Employees to enable the Contractor to properly complete CONDO Form 3 (as provided in the Authority's Def Stan 05-129 (Issue 5)) by the fifth day of each month once the Second Party has Deployed and shall keep an accurate record of the details provided to the First Party.

16. If the Second Party becomes aware that any of the Second Party's Employees, its Subcontractor's Employees or LRWs has died, suffered a serious accident, suffered injury, become a prisoner of war or been taken hostage, the Second Party shall ensure that the Authority, the First Party and the next of kin of the Second Party's Employee or LRW concerned, and procure that the next of kin of its Subcontractor's Employee or LRW concerned, are informed as quickly as possible.

Conduct

17. The Second Party shall require the Second Party's Employees, its Subcontractor's Employees and LRWs to act in a responsible manner and shall require the Second Party's Employees, its Subcontractor's Employees and LRWs to make themselves aware of and comply with the Local Military Commander's orders, instructions, regulations and procedures.

18. The Second Party shall, as far as it is able and based on the information available to it:

- a. inform the Second Party's Employees and procure that its Subcontractors inform the Subcontractor's Employees, prior to them being deployed, of their status whilst they are Deployed;
- b. inform the Second Party's LRWs and procure that its Subcontractors inform the Subcontractor's LRWs of their status whilst they are at an Expected Work Location or travelling between Expected Work Locations in support of the Contract;
- c. provide updates in relation to their respective status as appropriate.

19. The Second Party shall ensure that the Second Party's Employees, and shall procure that its Subcontractor's Employees and LRWs are aware that they may at any time be subject to a search of their person, property or vehicles and require their cooperation in relation to any such search.

20. The Second Party shall require the Second Party's Employees and its Subcontractor's Employees to report to the Authority's nominated CAA entry and exit points respectively on arrival and departure from the CAA and, during the Deployment, to any reporting point within the CAA nominated by the Authority.

21. The Second Party shall ensure that the Second Party's Employees, and shall procure that its Subcontractor's Employees and LRWs report to the Authority's nominated briefing centre as specified by the Authority for operational briefings as required by the Authority.

22. If the Authority, in its absolute discretion, restricts the movement within the CAA of the Second Party, the Second Party's Employees, its Subcontractors, the Subcontractor's Employees and LRWs, the Second Party shall inform the Second Party's Employees, its Subcontractors, the Subcontractor's Employees and LRWs as soon as practicable and require the Second Party's Employees, its Subcontractors, the Subcontractor's Employees and LRWs to comply with any such restriction.

23. The Second Party shall ensure that the Second Party's Employees, shall procure that its Subcontractor's Employees whilst they are Deployed and shall ensure that LRWs at any time whilst they are at an Expected Work Location or travelling between Expected Work Locations, do not carry Arms.

Clothing, Equipment and Transport

24. The Second Party shall, during the Deployment, ensure that the Second Party's Employees and shall procure that its Subcontractor's Employees and LRWs have appropriate equipment and clothing for the climate and the tasks which the Second Party is contracted to undertake.

25. The Second Party shall ensure that the Second Party's Employees, and shall procure that its

Subcontractor's Employees and LRWs do not wear clothing, including company livery, which detracts from their civilian status. The Second Party shall ensure that the Second Party's Employees and shall procure that its Subcontractor's Employees avoid the use of vehicles, equipment and property that could be confused with military vehicles, equipment and property, other than those issued to the Contractor by the Authority for the purposes of the Contract and made available to the Second Party or as otherwise directed by the Local Military Commander.

Health and Safety

26. The Second Party shall ensure that the Second Party's Employees, and shall procure that its Subcontractors, the Subcontractor's Employees and LRWs, as far as reasonably practicable, undertake all work in a manner comparable with the requirements of the UK's health, safety and environmental legislation, or in accordance with the equivalent requirements of the host nation where these are more stringent.

ID Cards

27. The Second Party shall ensure that all information, including that specified in the Authority's Def Stan 05-129 (Issue 5), required for the issue of identity cards or TCN cards to those of the Second Party's Employees and its Subcontractor's Employees who are authorised to Deploy is provided to the First Party in accordance with the processes set out in the Authority's Def Stan 05-129 (Issue 5).

28. The Second Party shall ensure that all information, including that specified in the Local Military Commander's orders, instructions, regulations and procedures, required for the issue of day security passes to the Second Party's and its Subcontractor's LRWs is provided to the First Party in accordance with the processes set out in the Local Military Commander's orders, instructions, regulations and procedures.

29. The Second Party shall be responsible for the safe-keeping of all identity cards, TCN cards and security passes issued to the Second Party's Employees, its Subcontractor's Employees and LRWs and shall require the Second Party's Employees to wear, and shall procure that its Subcontractor's Employees and LRWs wear, those identity cards, TCN cards and security passes as instructed by the Local Military Commander. The Second Party shall inform the Second Party's Employees, its Subcontractor's Employees and LRWs that any misuse, modification or misappropriation of their identity cards, TCN cards or security passes may result in action being taken by the Authority under clause 7.

Training

30. The Second Party shall ensure that the Second Party's Employees and shall procure that its Subcontractor's Employees and LRWs are provided with the appropriate level of CONDO related training for each Deployment.

Public Relations

31. The Second Party shall not make any press statement or undertake any publicity, advertising or marketing campaigns, including for recruitment, specifically referring to the Contract, this Agreement or any Subcontract without the prior written consent of the Authority as notified by the First Party."

ANNEX C – RESPONSIBILITIES FOR FOOD SUPPLY IN THE FALKLAND ISLANDS

This Annex amplifies condition A18 (Food Supply to the British Forces South Atlantic Islands (BFSAI)) defining the responsibilities of each of the Parties and entitlements for Contractor's Personnel for the provision of Contractor Deliverables to Authorised Accounts in the Falkland Islands.

Responsibilities for Food Supply to BFSAI Using the Falkland Islands Replenishment Ship (FIRS) and / or BFSAI Airbridge**1. Authority's Responsibilities**

1.1. The Authority will provide the following:

- 1.1.1. The schedule for FIRS sailings, including port of embarkation, earliest and latest dates for delivery of containers to the port and expected date of arrival in the Falkland Islands.
- 1.1.2. The schedule for BFSAI airbridge flights, including airport of embarkation, earliest and latest dates for delivery of freight to the airport and expected date of arrival in the Falkland Islands.
- 1.1.3. Freight space on the FIRS sailings for Products in containers.
- 1.1.4. Freight space on the BFSAI airbridge.
- 1.1.5. The Falklands warehouse and all associated handling aids, storage media and maintenance.
- 1.1.6. Transport of Products from port and airport of arrival in the Falkland Islands to the Falkland warehouse, the receipt processes, and storage in the warehouse.
- 1.1.7. Telephone and Internet connectivity.
- 1.1.8. Office accommodation, inclusive of heat, power and light.
- 1.1.9. Life support, including accommodation, meals, routine medical and dental treatment, medical evacuation for Contractor personnel in accordance with clause 7 – Entitlements of Contractor's Personnel.

1.2. The Authority will be liable for the following:

- 1.2.1. Any stock write offs resulting from failure of warehouse facilities, including full or partial loss of the warehouse by fire, flood or similar, unless the event is caused by the Contractor; and Loss during transportation in accordance with sub-clause 1.1.6.
- 1.2.2. Availability shortfalls resulting from late arrival of FIRS or the BFSAI airbridge.

2. Contractor's Responsibilities

2.1. The Contractor shall be responsible for:

- 2.1.1. Maintaining availability of the agreed South Atlantic Range and the Defined Stock Reserve, as required by the relevant KPIs in Schedule 5, and reporting performance against the KPIs.
- 2.1.2. Deciding the Products and quantities to be consigned to the Falklands warehouse via FIRS and the BFSAI airbridge
- 2.1.3. Packing and Delivery of containers by the required date to the nominated port of embarkation for FIRS, or BFSAI airbridge to ensure Contractor Deliverables remain fit for purposes during transportation to the Falklands warehouse.

- 2.1.4. Sourcing Products from the Falkland Islands in accordance with clause A18 Food Supply to the British Forces South Atlantic Islands (BFSAI), including transportation to the Falklands warehouse.
- 2.1.5. Managing the shelf life, quality and condition of the Products, including the stock rotation and picking policy to be implemented by the warehouse staff.
- 2.1.6. Ownership of the Products unless and until Delivered to or Collected by the Consignee in satisfaction of an Order.
- 2.1.7. Packaging of Products for despatch by BFSAI airbridge and Delivery of said Products to the airport of embarkation by the required date and time.
- 2.1.8. Provision of personnel to manage the stockholding in the Falklands warehouse.
- 2.1.9. Provision of, and the operating and maintenance cost of, vehicles for Contractor personnel.
- 2.1.10. Provision of uniforms and protective clothing for Contractor personnel.
- 2.1.11. Provision of office furniture and office and warehouse consumables for Contractor personnel.
- 2.1.12. Provision of mobile telephones for use by Contractor personnel and associated charges.
- 2.1.13. Provision of computers, software and peripherals for stock control, Product provisioning and general office use.

2.2. The Contractor shall be liable for the following:

- 2.2.1. Any stock surpluses and write offs, except those resulting from failure of warehouse facilities.
- 2.2.2. Life and disability insurance for Contractor personnel.

3. **Shared Responsibility between Authority and Contractor**

- 3.1. The Authority and the Contractor shall be responsible for the following:
 - 3.1.1. Picking Orders from the warehouse and issue processes.
 - 3.1.2. Packing of Orders for delivery to Authorised Account.

Responsibilities for Food Supply to BFSAI Using Contractor's Own Supply Chain

4. **Authority's Responsibilities**

- 4.1 The Authority will provide the following:
 - 4.1.1 The Falklands warehouse and all associated handling aids, storage media and maintenance.
 - 4.1.2 Transport of Products from airport of arrival in the Falkland Islands to the Falkland warehouse, the receipt processes, and storage in the warehouse. Telephone and Internet connectivity.
 - 4.1.3 Office accommodation, inclusive of heat, power and light.
 - 4.1.4 Life support, including accommodation, meals, routine medical and dental treatment, medical evacuation for Contractor personnel.
- 4.2 The Authority will be liable for the following:
 - 4.2.1 Any stock write offs resulting from failure of warehouse facilities, including full or partial loss of the warehouse by fire, flood or similar event unless the event is caused by the Contractor; and Loss during transportation in accordance with sub-clause 4.1.1.

5 Contractor's Responsibilities

- 5.1 The Contractor shall be responsible for:
- 5.1.1 Maintaining availability of the agreed South Atlantic Range and the Defined Stock Reserve, as required by the relevant KPIs in Schedule 5, and reporting performance against the KPIs.
 - 5.1.2 Deciding the Products and quantities to be consigned to the Falklands warehouse.
 - 5.1.3 Packing and Delivery of the Contractor Deliverables to the Falkland Islands Warehouse, or BFSAI airbridge to ensure Contractor Deliverables remain fit for purposes during transportation to the Falklands warehouse.
 - 5.1.4 Sourcing Products from the Falkland Islands in accordance with clause A18 Food Supply to the British Forces South Atlantic Islands (BFSAI), including transportation to the Falklands warehouse.
 - 5.1.5 Managing the shelf life, quality and condition of the Products, including the stock rotation and picking policy to be implemented by the warehouse staff.
 - 5.1.6 Ownership of the Products unless and until Delivered to or Collected by the Consignee in satisfaction of an Order.
 - 5.1.7 Packaging of Products for despatch by BFSAI airbridge and Delivery of said Products to the airport of embarkation by the required date and time.
 - 5.1.8 Provision of personnel to manage the stockholding in the Falklands warehouse.
 - 5.1.9 Provision of, and the operating and maintenance cost of, vehicles for Contractor personnel.
 - 5.1.10 Provision of uniforms and protective clothing for Contractor personnel.
 - 5.1.11 Provision of office furniture and office and warehouse consumables for Contractor personnel.
 - 5.1.12 Provision of mobile telephones for use by Contractor personnel and associated charges.
 - 5.1.13 Provision of computers, software and peripherals for stock control, Product provisioning and general office use.
- 5.2 The Contractor shall be liable for the following:
- 5.2.1 Any stock surpluses and write offs, except those resulting from failure of warehouse facilities.
 - 5.2.2 Life and disability insurance for Contractor personnel.
- 6. Shared Responsibility between Authority and Contractor**
- 6.1 The Authority and the Contractor shall have a shared responsibility for:
- 6.1.1 Picking Orders from the warehouse and issue processes.
 - 6.1.2 Packing of Orders for delivery to Authorised Account.

Entitlements of Contractor's Personnel

7. Authority's Responsibilities

- 7.1. The Authority will provide the following:
- 7.1.1. The Authority shall provide 1st line medical cover. Costs for prescriptions shall be recovered from the Contractor.
 - 7.1.2. The Authority shall provide 1st line emergency dental cover. Costs for any follow up work shall be recovered from the Contractor.

- 7.1.3. The Authority shall provide MEDEVAC/Compassionate Flights. Costs shall be recovered from the Contractor.
- 7.1.4. The Authority shall provide two (2) return flights per year to the UK for 2 x Contractors Management personnel.
- 7.1.5. The Authority shall provide for one (1) return flight / sailing per person per year for Contractors Warehouse Personnel / LEC Staff.
- 7.1.6. The Authority shall provide up to four (4) return flights per year to the UK for Contractors Management personnel.
- 7.1.7. The Authority shall provide Management Rank Equivalence for feeding and accommodation
- 7.1.8. The Authority shall provide suitable accommodation to Warehouse Personnel /LECs

ANNEX D – CHECKLIST FOR FOOD SUPPLY IN KENYA

1. Food Supply in Kenya

1.1. To support BATUK and exercising units in Kenya there is a requirement to for the supply of Contractor Deliverables to Authorised Accounts in the following permanent locations:

1.1.1. BATUK Rear – Nairobi Kahawa Barracks

1.1.2. BATUK Forward – Nanyuki Show Ground (NSG)

1.1.3. Laikipia Air Base (East) – Nanyuki.

1.2. In addition to the above, Deliveries will be required to Archers Post, Loldogia and Dol Dol exercise locations. These locations are dependent on the Authority's training needs and are not regular Delivery points.

2. Planning Factors

2.1. On deployment to Kenya the following factors will influence the requirement for operational feeding and shall be identified by the Authority before deployment;

2.1.1. Delivery Schedule whereby Deliveries are estimated to occur every [REDACTED] to meet the working schedules.

2.1.2. Feeding numbers for BATUK.

2.1.3. Exercise duration.

2.1.4. Whether the Contract Deliverables require appropriate temperature controlled delivery vehicles.

2.1.5. Method of Communication with the Unit. Generally communication is conducted via Mobile Phone or through manual returns sent via delivery drivers.

2.1.6. Deliveries that will be required before midday on the day of delivery. Given local transport issues and gaining access to Kahawa Barracks (Kenya Army Base) deliveries to Rear and Forward must be separate.

2.1.7. Identify whether Catering Consumables are required. Generally only provided to exercising troops based on unit requirements.

ANNEX E – PROTECTION OF UK OFFICIAL AND OFFICIAL SENSITIVE INFORMATION

Appendix 1 to Annex E – UK OFFICIAL and OFFICIAL-SENSITIVE Security Conditions for Overseas Contracts

Definitions

1. The term "Authority" means a UK Ministry of Defence (MOD) official acting on behalf of the Secretary of State for Defence.

Security Grading

2. All aspects associated with this Contract are classified UK OFFICIAL. Some aspects are more sensitive and are classified as UK OFFICIAL-SENSITIVE. The Authority shall issue a Security Aspects Letter to the Contractor which shall specifically define the UK OFFICIAL-SENSITIVE information that is furnished to it, or which is to be developed by it, under this Contract. The Contractor shall mark all UK OFFICIAL- SENSITIVE documents which he or she originates or copies during the Contract clearly with the UK OFFICIAL-SENSITIVE classification.

Security Conditions

3. The Contractor shall take all reasonable steps to make sure that all individuals employed on any work in connection with the Contract have notice that these provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

Protection of UK OFFICIAL and OFFICIAL-SENSITIVE Information

4. The Contractor shall protect UK OFFICIAL and OFFICIAL-SENSITIVE information provided to or generated by it in accordance with the requirements detailed in this Security Condition and any other conditions that may be specified by the Authority. The Contractor shall take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.

5. All UK OFFICIAL and OFFICIAL-SENSITIVE material including documents, media and other material must be physically secured to prevent unauthorised access. When not in use UK OFFICIAL and OFFICIAL-SENSITIVE documents/material shall be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE documents/material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be subject to a level of control.

6. Disclosure of UK OFFICIAL and OFFICIAL-SENSITIVE information shall be strictly controlled in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than to a person directly employed by the Contractor or sub-Contractor, or Service Provider.

7. Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract, and, save as provided for in Clause 6 the Contractor shall not make use of any article or part thereof similar to the Articles for any other purpose.

8. Subject to any rights of Third Parties, nothing in this Condition shall restrict the Contractor from using any specifications, plans, drawings and other documents generated outside of this Contract.

9. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 29.

Access

10. Access to UK OFFICIAL and OFFICIAL-SENSITIVE information shall be confined to those individuals who have a "need-to-know", have been made aware of the requirement to protect the information and whose access is essential for the purpose of his or her duties.

11. The Contractor shall ensure that all individuals requiring access to UK OFFICIAL- SENSITIVE information have undergone basic recruitment checks. This should include establishing proof of identity; confirming that they satisfy all legal requirements for employment by the Contractor; and verification of their employment

record. Criminal record checks should also be undertaken where permissible under national/local laws and regulations. This is in keeping with the core principles set out in the UK Government (HMG) Baseline Personnel Security Standard (BPSS).

Hard Copy Distribution

12. UK OFFICIAL and OFFICIAL-SENSITIVE documents shall be distributed, both within and outside company premises in such a way as to make sure that no unauthorised person has access. It may be sent by ordinary post in a single envelope. The words UK OFFICIAL or OFFICIAL- SENSITIVE must not appear on the envelope. The envelope should bear a stamp or marking that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.

13. Advice on the distribution of UK OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of UK OFFICIAL-SENSITIVE hardware shall be sought from the Authority.

Electronic Communication and Telephony and Facsimile Services

14. UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a CESG Commercial Product Assurance (CPA) cryptographic product or a MOD approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the CPA scheme are available at:

<http://www.cesg.gov.uk/servicecatalogue/Product-Assurance/Pages/Product-Assurance.aspx>

15. Exceptionally, in urgent cases UK OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so but only with the prior approval of the Authority. However, it shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the authority shall require. Such limitations including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.

16. UK OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the country of the Contractor and overseas. UK OFFICIAL-SENSITIVE information shall be discussed on fixed and mobile telephones only where there is a strong business need to do so and only with the prior approval of the Authority.

17. UK OFFICIAL information may be faxed to recipients located both within the country of the Contractor and overseas, however UK OFFICIAL-SENSITIVE information shall be faxed only where there is a strong business need to do so and only with the prior approval of the Authority.

Use of Information Systems

18. The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.

19. As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex- filtrate data.

20. The following describes the minimum security requirements for processing and accessing UK OFFICIAL-SENSITIVE information on IT systems.

a. **Access** Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of "least privilege" will be applied to System Administrators. Users of the IT System (Administrators should not conduct 'standard' User functions using their privileged accounts.

b. **Identification and Authentication (ID&A)**. All systems shall have the following functionality:

(1). Up-to-date lists of authorised users.

(2). Positive identification of all users at the start of each processing session.

c. **Passwords**. Passwords are part of most ID&A, Security Measures. Passwords shall be "strong" using an appropriate method to achieve this, for example, including numeric and "special" characters (if permitted by the system) as well as alphabetic characters.

d. **Internal Access Control**. All systems shall have internal Access Controls to prevent unauthorised users from accessing or modifying the data.

e. **Data Transmission**. Unless the Authority authorises otherwise, UK OFFICIAL- SENSITIVE information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public

network like the Internet, using a CPA product or equivalent as described in paragraph 14 above.

f. **Security Accounting and Audit.** Security relevant events fall into two categories, namely legitimate events and violations.

- (1). The following events shall always be recorded:
 - i. All log on attempts whether successful or failed,
 - ii. Log off (including time out where applicable),
 - iii. The creation, deletion or alteration of access rights and privileges,
 - iv. The creation, deletion or alteration of passwords,
- (2). For each of the events listed above, the following information is to be recorded:
 - i. Type of event,
 - ii. User ID,
 - iii. Date & Time,
 - iv. Device ID,

The accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

g. **Integrity & Availability.** The following supporting measures shall be implemented:

- (1). Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations),
- (2). Defined Business Contingency Plan,
- (3). Data backup with local storage,
- (4). Anti Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),
- (5). Operating systems, applications and firmware should be supported,
- (6). Patching of Operating Systems and Applications used shall be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.

h. **Logon Banners** Wherever possible, a "Logon Banner" shall be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring.

A suggested format for the text (depending on national legal requirements) could be:
"Unauthorised access to this computer system may constitute a criminal offence"

i. **Unattended Terminals.** Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

j. **Internet Connections.** Computer systems shall not be connected direct to the Internet or 'un-trusted' systems unless protected by a firewall (a software based personal firewall is the minimum).

k. **Disposal** Before IT storage media (e.g. disks) are disposed of, an erasure product shall be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

Laptops

21. Laptops holding any UK MOD supplied or contractor generated UK OFFICIAL-SENSITIVE information are to be encrypted using a CPA product or equivalent as described in paragraph 14 above.

22. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites. For the avoidance of doubt the term "drives" includes all removable, recordable media e.g. memory sticks, compact flash, recordable optical media (e.g. CDs and DVDs), floppy discs and external hard drives.

23. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.

24. Portable CIS devices holding MOD data are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

Loss and Incident Reporting

25. The contractor shall immediately report the loss of any UK OFFICIAL or OFFICIAL-SENSITIVE information to the Authority.

26. Accordingly, in accordance with Industry Security Notice 2014/02 as may be subsequently updated at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293480/ISN2014_02_Incident_Reporting.pdf

any security incident involving any UK MOD owned, processed or Contractor generated UK OFFICIAL or OFFICIAL-SENSITIVE information shall be immediately reported to the UK MOD Defence Industry Warning, Advice and Reporting Point (WARP), within the Joint Security Co-ordination Centre (JSyCC). This will assist the JSyCC in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the UK MOD's Chief Information Officer (CIO) and, as appropriate, the company concerned. The UK MOD WARP will also advise the contractor what further action is required to be undertaken.

JSyCC WARP Contact Details

Email: For those with access to the RLI: [REDACTED]

Email: For those without access to the RLI: [REDACTED]

Telephone: Working Hours: [REDACTED]

Out of Hours/Duty Officer Phone: [REDACTED]

Fax: [REDACTED]

Mail: Joint Security Co-ordination Centre (JSyCC), X007 Bazalgette Pavilion, RAF Wyton, Huntingdon, Cambs PE28 2EA.

Sub-Contracts

27. The Contractor may Sub-contract any elements of this Contract to Sub-contractors within its own country or to contractors located in the United Kingdom notifying the Authority. When Sub-contracting to a Sub-contractor located in either its own country or to the UK the Contractor shall ensure that these Security Conditions shall be incorporated within the Sub-contract document. The prior approval of the Authority shall be obtained should the Contractor wish to Sub-contract any UK OFFICIAL-SENSITIVE elements of the Contract to a Sub-contractor facility located in another (third party) country. The first page of Appendix 5 (MOD Form 1686 (F1686)) of the Security Policy Framework Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 form can be found at Appendix 5 at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc.

If the Sub-contract is approved, the Authority shall provide the Contractor with the security conditions that shall be incorporated within the Sub-contract document.

Publicity Material

28. Contractors wishing to release any publicity material or display hardware that arises from this contract must seek the prior approval of the Authority. Publicity material includes open publication in the contractor's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the MOD, Services or any other government department.

Destruction

29. As soon as no longer required, UK OFFICIAL and OFFICIAL- SENSITIVE information/material shall be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. Advice shall be sought from the Authority when information/material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Contractor to be necessary or desirable. Unwanted UK OFFICIAL- SENSITIVE information/material which

cannot be destroyed in such a way shall be returned to the Authority.

Interpretation/Guidance

30. Advice regarding the interpretation of the above requirements should be sought from the Authority.

31. Further requirements, advice and guidance for the protection of MOD information at the level of UK OFFICIAL-SENSITIVE may be found in Industry Security Notices at:

<https://www.gov.uk/government/publications/industry-security-notice-isns>

Audit

32. Where considered necessary by the Authority the Contractor shall provide evidence of compliance with this Security Condition and/or permit the inspection of the Contractors processes and facilities by representatives of the Contractors national security authorities or of the Authority to ensure compliance with these requirements.

Appendix 2 to Annex E – Security Aspects Letter for a Contract Involving Information Classified Up to OFFICIAL-SENSITIVE to Contractors Overseas

(CLASSIFIED AS APPROPRIATE BUT NOT HIGHER THAN OFFICIAL-SENSITIVE)

Messrs

For the personal attention of:

Name of responsible Officer

Dear Sirs

CONTRACT NO DFP/001, OVERSEAS DEPLOYABLE FOOD PROGRAMME [DATE]

1. On behalf of the Secretary of State for Defence for the United Kingdom of Great Britain and Northern Ireland, I hereby give you notice that all aspects of the work under the above contract are classified as UK OFFICIAL and the aspects defined below are specifically caveated as UK OFFICIAL-SENSITIVE for the purpose of Contract condition A28 (Official-Sensitive Security Requirements)

UK OFFICIAL-SENSITIVE SECURITY ASPECTS (To be Excluded)
UK_Overseas Statement of Requirement (StOR) (DFP-PRO-0008-A Rev3)
UK_Overseas Assumptions and Information Document (DFP-PRO-0009-A Rev2)
UK_Contractor Deliverable Plans (DFP-PRO-0011-A)
Requests for Quotations (Exercises and Operations)
Annex A to Schedule of Requirement (Pricing Schedule)

If any security incident occurs to any classified information relating to this contract the details of the incident shall be immediately reported in accordance with paragraphs 25 & 26 of the Security Condition Appendix 1 to Annex E.

1. Information about this contract must not, without the approval of the Authority, be published or communicated to anyone except where necessary for the execution of the contract.
2. Your attention is drawn to the requirements of the "Security Conditions". In particular, you should take all reasonable steps to make sure that all individuals employed on any work in connection with the contract and have access to information on it are fully aware of the requirements for the protection of UK OFFICIAL and OFFICIAL-SENSITIVE classified information and that such requirements shall continue to apply after the completion or earlier determination of the contract.
3. The enclosed "Security Conditions" [Appendix 1 to Annex E] outlines the minimum measures required to safeguard UK OFFICIAL and OFFICIAL-SENSITIVE information and is provided to enable you to provide the required degree of protection.
4. Will you please confirm that the requirements of this Security Aspects Letter and the Security Conditions are understood and will be complied with.

Yours faithfully,

Copy via email to:



ANNEX F – CONTRACTOR’S COMMERCIALLY SENSITIVE INFORMATION

Description of Tenderer’s Commercially Sensitive Information: Appendix 1 of Annex N to Schedule 3 - Pricing Schedule
Cross Reference(s) to location of sensitive information in Tender: Commercial Proposal, Appendix 1 of Annex N to Schedule 3 – Pricing Schedule
Explanation of Sensitivity Commercially Sensitive Information
Details of potential harm resulting from disclosure: Compromise of competitive position in the marketplace
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters: Name: [REDACTED] Position: General Manager Address: [REDACTED] Telephone Number: [REDACTED] Email Address: [REDACTED]

**Annex G to Schedule 3
DFP/001**

ANNEX G – REQUIRED INSURANCE

1. Insurance the Contractor shall take out and maintain or procure the taking out and maintenance of at all times during the period that this Contract is in effect

1.1. Insured

The Contractor

1.2. Interest

To indemnify the insured in respect of all sums which the insured shall become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

1.2.1. death or bodily injury to or sickness, illness or disease contracted by any person;

1.2.2. physical loss of or damage to property;

happening during the period of insurance (in paragraph 1.5 below) and arising out of or in connection with the Contract.

1.3. Limit of indemnity

Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but [REDACTED] any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured under the policy).

1.4. Territorial limits

Worldwide.

1.5. Period of insurance

From the date of this Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

1.6. Cover features and extensions

1.6.1 Indemnity to principals clause or otherwise to include the Authority as an additional insured.

1.6.2 Legal defence costs.

1.6.3 Airside third party liability where appropriate.

1.6.4 Waiver of subrogation and/or claims for contributory negligence against the Authority, its employees, servants and agents.

1.7. Principal exclusions

1.7.1 War and related perils.

1.7.2 Nuclear and radioactive risks.

1.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the insured arising out of the course of their employment.

1.7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by Legislation in respect of such vehicles.

1.7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.

1.7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

1.7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

1.7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

1.8. Maximum deductible threshold

Not to exceed [REDACTED]

ANNEX H – CONTRACTORS ON DEPLOYED OPERATIONS (CONDO)

Definitions and Interpretation

1.1. In this condition the following words and expressions shall have the meanings set respectively against them:

- a. "Arms" means any weapon, which, for the avoidance of doubt, excludes anything to be used for the purpose of performing the Contract;
- b. "Authority to Deploy" means the Authority's formal written authority for the Contractor to Deploy;
- c. "CAA" means a CONDO Applicable Area, being an OA or any other specific area identified by the Authority as CONDO applicable.
- d. "Contractor's Employees" means those employees of the Contractor, being UK nationals and TCNs, but excluding LRWs, who are Deployed in connection with the performance of the Contract;
- e. "CONDO" means Contractors on Deployed Operations, being contractors providing Articles or Services or both outside the British Isles within a CAA as part of the civilian component supporting UK armed forces;
- f. "Deploy" means bringing the Contractor, the Contractor's Employees, its Subcontractors and the Subcontractor's Employees under the administration and control of the Authority, which will take place:
 - i. on entering a Government Establishment for transit to the CAA; or
 - ii. on entering the CAA at the nominated entry point; or
 - iii. on reporting to the Representative of the Authority when already in the CAA,and "Deployed" shall be construed accordingly;
- g. "Deployment" means the period during any act of preparing, moving and initial setting up of personnel and equipment to enable the delivery of Services within a location identified in CONDO Form 2 issued in accordance with Def Stan 05-129 (Issue 5), their presence within that location and their subsequent recovery or redeployment;
- h. "Expected Work Locations" means the locations in the CAA specified in the Contract.
- i. "Expected Modes of Transport" means the modes of transport to be used in the CAA for the transportation of the Contractor, the Contractor's Employees, its Subcontractors, the Subcontractor's Employees and LRWs specified in the Contract.
- j. "Local Military Commander" means the senior UK military person within a specific geographical area who is responsible for discipline, security and administration of that area and who for the purposes of this condition shall be a Representative of the Authority;
- k. "LRWs" means Locally Recruited Workers, being workers who are engaged either by the Contractor or by its Subcontractors and who normally reside in the country or countries in which the contracted Services are being performed;
- l. "OA" means an Operations Area, being an area of land, sea and airspace outside the British Isles but excluding the PJOBS and Germany unless a PJOB is included within an OA due to specific operational circumstances, defined by the Authority and in which a joint UK operational commander (for a joint operations area), or a single service operational commander (for a single service operations area), plans and conducts military operations or exercises to accomplish a specific mission.
- m. "Operations" means any military action or the carrying out of any strategic, operational, tactical, service, training or administrative military mission or the process of carrying on combat including any movement, supply, attack, defence and manoeuvre needed to gain the objectives of any battle or campaign;
- n. "OSI" means Operation Specific Information, being information specific to the CAA;
- o. "PJOB" means a Permanent Joint Operating Base;

- p. "Representative of the Authority" has the meaning given to it in H4 (Authority Representative);
- q. "Subcontract" means any subcontract entered into by the Contractor or, where appropriate, by a Subcontractor, which requires a Subcontractor to Deploy to the CAA in connection with the performance of the Contract;
- r. "Subcontractor" means a subcontractor at any level of contracting with a Subcontract;
- s. "Subcontractor's Employees" means those employees of any Subcontractor, being UK nationals and TCNs, but excluding LRWs, who are Deployed to the CAA in connection with the performance of the Contract;
- t. "TCN" means third country national, being an individual who is not a UK national.

1.2. In this condition the term "procure" shall be interpreted as requiring the Contractor to use all reasonable efforts to cause the occurrence of the event or outcome concerned, provided that the Contractor shall remain responsible to the Authority to the full extent of its obligation in relation to that event or outcome if that event or occurrence does not occur.

Authority to Deploy

1.3. The Contractor shall not and shall procure that the Contractor's Employees, its Subcontractors and the Subcontractor's Employees do not move into or within the CAA in connection with the performance of the Contract until the Contractor has:

- a. provided the Authority with all required information for the completion of Part 3 of CONDO Form 1 and CONDO Form 2, as provided in Def Stan 05-129 (Issue 5);]
- b. received the Authority's Authority to Deploy in CONDO Form 2, issued as provided in Def Stan 05-129 (Issue 5);
- c. confirmed that the Contractor's Employees and Subcontractor's Employees have completed the CONDO related training specified by the Authority;
- d. confirmed that the Contractor's Employees and Subcontractor's Employees are medically and dentally fit to Deploy and to undertake the tasks to which they are assigned, including being properly immunised;
- e. provided the Authority with Form T-SL-DES01, completed as provided in Def Stan 05-129 (Issue 5), and, on the receipt by the Contractor of a signed Form T-SL-DES01, confirmed that it has notified the Contractor's Employees and Subcontractor's Employees of their status as civilians subject to service discipline and their respective nominated Commanding Officer in the CAA;
- f. received confirmation that the Contractor's Employees and Subcontractor's Employees have been security cleared to the levels stated in the Contract for the particular tasks;
- g. confirmed receipt of an appropriate identity card or TCN card issued by the Authority in respect of each individual listed in CONDO Form 2; and
- h. confirmed that it has undertaken appropriate risk assessments in relation to the Expected Work Locations and the Expected Modes of Transport, which support the Deployment.

The Authority's Right to Withhold, Withdraw, Move and Remove

1.4. The Authority may at any time and from time to time for any operational reason which the Authority in its absolute discretion shall determine:

- a. withhold or withdraw Authority to Deploy;
- b. move or require the removal of the Contractor or a Subcontractor from its current location to a location determined to be appropriate by the Authority in discharging its responsibility under clause 1.47;
- c. move or require the removal of any of the Contractor's Employees, Subcontractors' Employees or LRWs from their current location to a location determined to be appropriate by the Authority in discharging its responsibility under clause 1.47 or in response to the Contractor's Employees, Subcontractor's Employees, or LRWs not acting in accordance with clause 1.28. The Contractor shall, as soon as reasonably practicable, move or remove any Contractor's Employee, Subcontractor's Employee or LRW whom the Authority requires to be moved or removed.

1.5. Where practicable and subject to operational constraints, the Authority shall inform the Contractor of

its intentions prior to moving the Contractor's Employees, the Subcontractor's Employees and LRWs in accordance with clause 1.4. Where the Authority moves the Contractor's Employees, the Subcontractor's Employees and LRWs in accordance with clause 1.4 without informing the Contractor, the Authority shall, as soon as reasonably practicable within operational constraints, notify the Contractor of the location to which the Contractor's Employees, the Subcontractor's Employees and LRWs have been moved.

1.6. The Authority shall not be obliged to give reasons for taking any action in accordance with clause 1.4 but may, in its sole discretion, indicate its reasons.

1.7. Notwithstanding the provisions of clause 1.6, in the event that the Contractor is involved in any employment claim or dispute arising in connection with any action taken by the Authority under clause 1.4, the Authority shall, where reasonably practicable, provide to the Contractor any relevant information that the Contractor may reasonably request for the purpose of addressing any such claim or dispute, except any such information the provision of which would be contrary to the interests of national security, in breach of a confidentiality or contractual obligation of the Authority, contrary to a statutory requirement or Government policy or as otherwise reasonably specified by the Authority.

The Authority's right to move between Expected Work Locations

1.8. The Authority may at any time and from time to time move the Contractor's Employees, the Subcontractor's Employees and LRWs between Expected Work Locations using the Expected Modes of Transport to undertake the tasks specified in the Contract. Where the Authority moves the Contractor's Employees, the Subcontractor's Employees and LRWs between Expected Work Locations for periods of longer than 24 hours, the Authority shall, where practicable and where this has been requested by the Contractor, inform the Contractor prior to moving the Contractor's Employees, the Subcontractor's Employees and LRWs or, where this is not practicable or has not been requested by the Contractor, as soon as reasonably practicable within operational constraints.

The Authority's right to move to new work locations which are not Expected Work Locations

1.9. The Authority may at any time require the movement of the Contractor's Employees, the Subcontractor's Employees and LRWs to new work locations which are not Expected Work Locations to undertake the tasks specified in the Contract. Where the Authority requires the Contractor's Employees, the Subcontractor's Employees and LRWs to move to undertake tasks at new work locations which are not Expected Work Locations, the Authority shall request the Contractor's prior written approval of the movement, such approval not to be unreasonably withheld. The Contractor shall provide such approval or the reasons for declining to provide such approval within 72 hours of the Authority's request or within such other time period as is specified in the Contract. When a new work location is agreed, the Contract shall be amended to add that new work location to the list of Expected Work Locations and to make any associated adjustments to the Contract that may be required.

Provision of Life Support Facilities

1.10. The Contractor shall provide living accommodation, laundry facilities, feeding, potable water, transport and fuel for the Contractor's Employees unless otherwise agreed with the Authority in the Contract.

1.11. The Authority shall provide, where available, access for the Contractor's Employees and Subcontractor's Employees to any existing facilities for personal welfare, communications, entertainment and recreation, which are provided for the use of military personnel, unless otherwise agreed with the Contractor in the Contract.

1.12. The Contractor shall pay any specified charges for the use of the facilities specified in clauses 1.10 and 1.11.

1.13. The Authority may, at its discretion, provide chaplaincy services to the Contractor's Employees and Subcontractor's Employees without charge where such services are available.

1.14. The Authority shall provide an operational specific medical warning notice(s) to the Contractor prior to the Contractor, the Contractor's Employees, its Subcontractors and the Subcontractor's Employees being Deployed, providing, where appropriate, information supplementing that provided by the Foreign and Commonwealth Office, on medical issues specific to the CAA.

1.15. The Contractor shall ensure that the Contractor's Employees, and shall procure that the Subcontractor's Employees, are medically fit and dentally fit to Deploy and to undertake the tasks to which they are assigned, including, taking into account any notices issued under clause 1.14, being appropriately immunised.

1.16. Unless otherwise specified by the Authority in the Contract and where medical facilities exist, the Authority shall provide to the Contractor's Employees and Subcontractor's Employees, free of charge,

medical treatment and emergency dental treatment, equivalent to that provided to military personnel whilst Deployed.

1.17. Where the Contractor's Employees or Sub Contractor's Employees have been Deployed in breach of clause 1.15 the Authority reserves the right to:

- a. charge the Contractor reasonable and proper charges for the provision of medical or dental treatment; or
- b. move or require the removal of any such Contractor's Employees or Subcontractor's Employees following the exercise of its right under clause 1.4.

1.18. The Authority shall provide, free of charge, first-aid treatment to LRWs whilst they are at an Expected Work Location or travelling between Expected Work Locations, in support of the Contract.

1.19. With regard to medical evacuation:

- a. the Contractor shall be responsible for the medical evacuation of both the Contractor's Employees and Subcontractor's Employees unless otherwise notified by the Authority;
- b. where it is not safe or practicable for the Contractor to discharge its responsibilities under clause 1.19.a), the Authority shall, where reasonably practicable, move Contractor's Employees and Subcontractor's Employees to a safe area from which the Contractor is able to take over the medical evacuation of the Contractor's Employees or Subcontractor's Employees, on either a repayment basis or, at the Authority's discretion, free of charge.

1.20. With regard to repatriation:

- a. the Contractor shall be responsible for the repatriation of deceased Contractor's Employees and deceased Subcontractor's Employees unless otherwise notified by the Authority;
- b. where it is not safe or practicable for the Contractor to discharge his responsibilities under clause 1.20.a., the Authority shall, where reasonably practicable, move deceased Contractor's Employees and deceased Subcontractor's Employees to a safe area from which the Contractor is able to take over the repatriation of deceased Contractor's Employees and deceased Subcontractor's Employees, on either a repayment basis or, at the Authority's discretion, free of charge.

1.21. The Authority may provide, at its discretion, subject to compliance with the processes set out in Def Stan 05-129 (Issue 5), personal cheque encashment facilities to those of the Contractor's Employees and Subcontractor's Employees who are Deployed, but not to LRWs, where such facilities are available to military personnel.

The Contractor's Obligations

Risk Assessments

1.22. The Contractor shall carry out risk assessments for all Expected Work Locations in the CAA and for the Expected Modes of Transport to and between Expected Work Locations, as set out in the Contract, and, as far as is practicable, shall maintain their currency during the term of any Deployment. The Authority shall provide information in support of such risk assessments as far as it is able.

1.23. Where:

- a. the Contractor's risk assessment demonstrates that the safety environment at an Expected Work Location within the CAA or in respect of the Expected Modes of Transport to and between the Expected Work Locations provides justification either not to Deploy the Contractor's Employees and Subcontractor's Employees or to withdraw the Contractor's Employees, Subcontractor's Employees and LRWs from an existing Deployment; or
- b. the Contractor does not have sufficient information to undertake a proper risk assessment;

the Contractor may decline to provide personnel for a task or withdraw them from an existing Deployment in accordance with clause 1.24.

Right to Withdraw

1.24. If the Contractor's risk assessment demonstrates the circumstances set out in clause 1.23.a., or the Contractor does not have sufficient information to undertake a proper risk assessment in accordance with clause 23.b:

- a. the Contractor shall inform the Authority at the earliest opportunity;
- b. whilst the Contractor is considering whether or not to Deploy the Contractor's Employees

and Subcontractor's Employees, or to withdraw the Contractor's Employees, Subcontractor's Employees and LRWs, the Contractor shall keep the Authority informed of the Contractor's intentions by means of regular updates;

c. the Contractor shall consult with the Authority to ensure that there is an informed exchange of information and to discuss the Contractor's concerns. The Contractor shall consider as part of its on-going risk assessment any additional information provided by the Authority which may become available. If the Authority considers that any withdrawal required by the Contractor cannot be carried out safely, the Authority will inform the Contractor at the earliest opportunity;

d. if, following such consultation, discussion and further consideration, the Contractor decides that the safety environment is such that the Contractor's Employees and Subcontractor's Employees will not be Deployed or the Contractor's Employees, Subcontractor's Employees and LRWs will be withdrawn, the Contractor shall notify the Authority of its decision without delay.

Personnel

1.25. The Contractor shall provide to the Authority all information necessary for the completion of Part 3 of CONDO Form 1 and CONDO Form 2 and shall provide to the Authority duly completed CONDO Form 4A, CONDO Form 4B and Form T-SL-DES01 (as provided in Def Stan 05-129 (Issue 5)) no later than forty-eight (48) hours prior to the Contractor being Deployed.

1.26. The Contractor shall provide to the Authority a duly completed CONDO Form 3 (as provided in Def Stan 05-129 (Issue 5)) by the fifth (5th) Business Day of each Month once Deployed and shall keep an accurate record of the details provided to the Authority.

1.27. If the Contractor becomes aware that any of the Contractor's Employees, Subcontractor's Employees or LRWs has died, suffered a serious accident, suffered injury, become a prisoner of war or been taken hostage, the Contractor shall ensure that the Authority and the next of kin of the Contractor's Employee or LRW concerned, and procure that the next of kin of the Subcontractor's Employee or LRW concerned, are informed as quickly as possible.

Conduct

1.28. The Contractor shall require the Contractor's Employees, Subcontractor's Employees and LRWs to act in a responsible manner and shall require the Contractor's Employees, Subcontractor's Employees and LRWs to make themselves aware of and comply with the Local Military Commander's orders, instructions, regulations and procedures.

1.29. The Contractor shall, as far as it is able and based on the information available to it:

a. inform the Contractor's Employees and procure that the Subcontractor informs the Subcontractor's Employees, prior to them being Deployed, of their status whilst they are Deployed;

b. inform the Contractor's LRWs and procure that the Subcontractor informs the Subcontractor's LRWs of their status whilst they are at an Expected Work Location or travelling between Expected Work Locations in support of the Contract;

c. provide updates in relation to their respective status as appropriate.

1.30. The Contractor shall ensure that the Contractor's Employees, and shall procure that the Subcontractor's Employees and LRWs are aware that they may at any time be subject to a search of their person, property or vehicles and require their co-operation in relation to any such search.

1.31. The Contractor shall require the Contractor's Employees and Subcontractor's Employees to report to the Authority's nominated CAA entry and exit points respectively on arrival and departure from the CAA and, during the Deployment, to any reporting point within the CAA nominated by the Authority.

1.32. The Contractor shall ensure that the Contractor's Employees and shall procure that the Subcontractor's Employees and LRWs report to the Authority's nominated briefing centre as specified by the Authority for operational briefings as required by the Authority.

1.33. If the Authority, in its absolute discretion, restricts the movement, within the CAA, of the Contractor, the Contractor's Employees, the Subcontractor, the Subcontractor's Employees and LRWs, the Contractor shall inform the Contractor's Employees, the Subcontractor, the Subcontractor's Employees and LRWs as soon as practicable and require the Contractor's Employees, the Subcontractor, the Subcontractor's Employees and LRWs to comply with any such restriction.

1.34. The Contractor shall ensure that the Contractor's Employees, shall procure that the Subcontractor's Employees whilst they are Deployed and shall ensure that LRWs at any time whilst they are at an Expected

Work Location or travelling between Expected Work Locations, do not carry Arms.

Clothing, Equipment and Transport

1.35. The Contractor shall, during the Deployment, ensure that the Contractor's Employees and shall procure that the Subcontractor's Employees and LRWs have appropriate equipment and clothing for the climate and the tasks which the Contractor is contracted to undertake.

1.36. The Contractor shall ensure that the Contractor's Employees and shall procure that the Subcontractor's Employees and LRWs do not wear clothing, including company livery, which detracts from their civilian status. The Contractor shall ensure that the Contractor's Employees and shall procure that the Subcontractor's Employees avoid the use of vehicles, equipment and property that could be confused with military vehicles, equipment and property, other than those issued to the Contractor by the Authority for the purposes of the Contract or as otherwise directed by the Local Military Commander.

1.37. The Contractor shall be responsible for the provision of transportation for the Contractor's Employees, Subcontractor's Employees and LRWs and their equipment to, from and within the CAA. Where the provision of such transportation by the Contractor is not commercially available or cost effective, the Authority may in its sole discretion, where reasonably practicable, offer assistance at a price to be agreed on a repayment basis, or at the Authority's discretion, free of charge.

1.38. Where the Authority has moved the Contractor's Employees, Subcontractor's Employees and LRWs:

- a. under clause 1.4 in discharging its responsibility under clause 1.47 (but not where it has moved the Contractor's Employees, Subcontractor's Employees and LRWs as a result of them not acting in accordance with clauses 1.15 or 1.28); or
- b. under clauses 1.8 or 1.9;

the cost and provision of such transportation shall be borne by the Authority.

Health and Safety

1.39. The Contractor shall ensure that the Contractor's Employees, and shall procure that the Subcontractor's Employees and LRWs, as far as reasonably practicable, undertake all work in a manner comparable with the requirements of the UK's health, safety and environmental legislation, or in accordance with the equivalent requirements of the host nation where these are more stringent.

ID cards

1.40. The Contractor shall ensure that all information, including that specified in Def Stan 05-129 (Issue 5), required for the issue of identity cards or TCN cards to those of the Contractor's Employees and Subcontractor's Employees who are authorised to Deploy is provided to the Authority in accordance with the processes set out in Def Stan 05- 129 (Issue 5).

1.41. The Contractor shall inform the Contractor's Employees and Subcontractor's Employees that the Authority will issue to the Contractor the appropriate MOD identity card or TCN card for each of them.

1.42. The Contractor shall ensure that all information, including that specified in the Local Military Commander's orders, instructions, regulations and procedures, required for the issue of day security passes to the Contractor's and Subcontractor's LRWs, is provided to the Authority in accordance with the processes set out in the Local Military Commander's orders, instructions, regulations and procedures.

1.43. The Contractor shall identify those of the Contractor's Employees, Subcontractor's Employees and LRWs who are to be employed solely on medical, dental or spiritual welfare services to enable the Authority to issue separate identity cards and "Red Cross armbands" for those Contractor's Employees, Subcontractor's Employees and LRWs.

1.44. The Contractor shall be responsible for the safe-keeping of all identity cards, TCN cards and security passes issued to the Contractor's Employees, Subcontractor's Employees and LRWs and shall require the Contractor's Employees to wear and shall procure that the Sub-Contractor's Employees and LRWs wear those identity cards, TCN cards and security passes as instructed by the Local Military Commander. The Contractor shall inform the Contractor's Employees, Subcontractor's Employees and LRWs that any misuse, modification or misappropriation of their identity cards, TCN cards or security passes may result in action being taken by the Authority under clause 1.4.

Training

1.45. The Contractor shall ensure that the Contractor's Employees, and shall procure that the Subcontractor's Employees and LRWs, are provided with the appropriate level of CONDO related training for each Deployment.

Public Relations

1.46. The Contractor shall not make any press statement or undertake any publicity, advertising or marketing campaigns, including for recruitment, specifically referring to the Contract without the prior written consent of the Authority.

The Authority's Responsibilities

1.47. The Authority shall afford appropriate protection commensurate with the threat for the Contractor's Employees and Subcontractor's Employees and the Contractor's and Subcontractor's property whilst Deployed and for LRWs whilst they are at an Expected Work Location or travelling between Expected Work Locations in support of the Contract and take such steps as are reasonable to ensure their safety, including, if necessary, removing or evacuating them from the area under threat.

1.48. The Authority shall, where appropriate, issue to the Contractor personal protective equipment of a non-primary work related nature for the use of Contractor's Employees, Subcontractor's Employees and LRWs and provide instruction in the use of any such personal protective equipment.

1.49. The Authority shall, prior to the Contractor being Deployed and during the Deployment, provide the Contractor with appropriate OSI relevant to the Deployment, including the types of information identified within Def Stan 05-129 (Issue 5).

1.50. The Authority shall in accordance with Def Stan 05-129 (Issue 5) and prior to the Contractor being Deployed, issue:

- a. a MOD Contractors Defence Identity Card for each of the Contractor's Employees and Subcontractor's Employees, who are UK nationals, except those identified under clause 1.50.b), where an application has been correctly submitted and proof of appropriate security clearance has been provided.
- b. a MOD FIdent 106 identity card and a "Red Cross armlet" for each of the Contractor's Employees and Subcontractor's Employees who are identified by the Contractor as being solely employed on medical, dental or spiritual welfare services.
- c. a TCN card – for each of the Contractor's Employees and Subcontractor's Employees who are third country nationals where an application has been correctly submitted.

1.51. The Authority shall, subject to military regulations, issue:

- a. an appropriate day security pass to each LRW, except those identified under clause 1.51.b., under the arrangements of the Local Military Commander;
- b. a MOD FIdent 107 identity card and a "Red Cross armlet" to each LRW who is identified by the Contractor as being solely engaged on medical, dental or spiritual welfare services, under the arrangements of the Local Military Commander;
- c. an appropriate security pass to each TCN under the arrangements of the Local Military Commander.

1.52. The Authority shall provide at the Authority's nominated briefing centre appropriate operational briefings free of charge to the Contractor's Employees, Subcontractor's Employees and LRWs as part of the initial reception process and thereafter as necessary.

1.53. The Authority shall make the Local Military Commander's orders, instructions, regulations and procedures available to the Contractor's representative in the CAA in such a manner as to facilitate compliance by the Contractor with its obligations in particular under clauses 1.28, 1.33 and 1.42.

1.54. If the Authority becomes aware of any of the circumstances mentioned in clause 1.27, where the Authority believes that the Contractor is not already so aware, the Authority shall advise the Contractor accordingly.

Subcontracts

1.55. If the Contractor enters into any Subcontract, the Contractor shall incorporate into any such Subcontract the terms set out in the Appendix 2 to Annex B to this condition.

1.56. The Authority may enforce against a Subcontractor any provision conferring a benefit on the Authority contained in the Appendix 2 to Annex B to this condition as incorporated into any Subcontract and neither the Contractor nor any Subcontractor shall be entitled to exclude such right of the Authority.

1.57. Subject always to the Subcontractor complying with the terms of the Appendix 2 to Annex B to this condition, any Subcontractor having the Appendix 2 to Annex B to this condition incorporated into its

Subcontract may enforce against the Authority any provision of this condition conferring a benefit upon it, and neither the Authority nor the Contractor shall be entitled to exclude such right of any such Subcontractor.

Performance of the Contract

1.58. The parties acknowledge that, if the Authority exercises its rights under clauses 1.4 or 1.33 of this condition, or the Contractor withdraws the Contractor's Employees, Subcontractor's Employees and LRWs in accordance with clauses 1.23 and 1.24, the Contractor may be unable to perform certain or all of its obligations under the Contract in accordance with its terms, either in the manner or at the time intended or at all. Subject to clause 1.59, to the extent that it can be established that the exercise of the Authority's rights under clauses 1.4 or 1.33, or the withdrawal of the Contractor's Employees, Subcontractor's Employees and LRWs in accordance with clauses 1.23 and 1.24 has directly caused:

- a. the Contractor's non-performance of an obligation under the Contract; or
- b. the Contractor's delay in performing an obligation under the Contract; or
- c. a change in the Contractor's costs of performing its obligations under the Contract which is attributable to the exercise of those rights by the Authority or the withdrawal of the Contractor's Employees, Subcontractor's Employees and LRWs;

the Contractor shall be entitled to submit a claim:

- i. for relief from performing that obligation;
- ii. to delay its performance of that obligation;
- iii. for a corresponding adjustment to the Contract in relation to price or delivery.

1.59. Notwithstanding the provisions of clause 1.58, the Contractor shall not be entitled to be granted relief from performing an obligation under the Contract, or to delay its performance of an obligation, or to a corresponding adjustment to the Contract in relation to price or delivery, where and to the extent that the Contractor:

- a. failed to comply with its obligations under clauses 1.3, 1.15, 1.22, 1.28, 1.30, 1.31, 1.32, 1.33, 1.34, 1.35, 1.37, 1.39, 1.44 and 1.45 of this condition and such failure gave rise to the exercise by the Authority of its rights under clauses 1.4 or 1.33; or
- b. invalidly exercised its right to withdraw under clauses 1.23 and 1.24.

**ANNEX I - TRANSFER REGULATIONS: EMPLOYEE TRANSFER ARRANGEMENTS
ON ENTRY**

1. Employee Information

1.1. No later than three (3) Months prior to the Relevant Transfer Date the Authority will provide to the Contractor the information listed in Part A of Appendix 1 to this Annex in respect of Previous Contractor Employees, to the extent that such information has been provided to the Authority by the Previous Contractor.

1.2. The Authority will provide the Contractor with any update to the information provided under paragraph 1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.

1.3. The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 1.1 to an Employing Sub-Contractor within seven (7) 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.

1.4. Paragraph 1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the DPA and any data provided by the Authority in accordance with paragraph 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 1.1 above, the Authority shall provide full data, as listed in Part B of Appendix 1, no later than twenty-eight (28) calendar days prior to the Relevant Transfer.

1.5. The Authority does not warrant the accuracy of the information provided under paragraph 1.1.

2. Obligations in respect of Previous Contractor Employees

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. 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.

2.3. 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.

2.4. 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.

3. Indemnities

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:

- 3.1.1. any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
 - 3.1.2. 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
 - 3.1.3. any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
 - 3.1.4. Any variations or proposed variations to any Previous Contractor Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B).
4. **General Provisions Applicable to Previous Contractor Employees and Contractor Personnel**

Contractor Indemnity

4.1. 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 Contract.

Post Transfer Reporting

- 4.2. 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:
- 4.2.1. any proposed, agreed or imposed changes to terms and conditions of service;
 - 4.2.2. disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
 - 4.2.3. any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
 - 4.2.4. completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
 - 4.2.5. out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

APPENDIX 1 TO ANNEX I – PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

5. Part A

5.1. Pursuant to paragraph 1.1 of Annex I, 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:

Personal, Employment and Career

- 5.1.1. Age;
- 5.1.2. Security Vetting Clearance;
- 5.1.3. Job title;
- 5.1.4. Work location;
- 5.1.5. Conditioned hours of work;
- 5.1.6. Employment Status;
- 5.1.7. Details of training and operating licensing required for Statutory and Health and Safety reasons;
- 5.1.8. Details of training or sponsorship commitments;
- 5.1.9. Standard Annual leave entitlement and current leave year entitlement and record;
- 5.1.10. Annual leave reckonable service date;
- 5.1.11. Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- 5.1.12. 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;
- 5.1.13. Issue of Uniform/Protective Clothing;
- 5.1.14. Working Time Directive opt-out forms; and
- 5.1.15. Date from which the latest period of continuous employment began.

Performance Appraisal

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

Superannuation and Pay

- 5.1.19. Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken within the last two (2) years;
- 5.1.20. Annual salary and rates of pay band/grade;
- 5.1.21. Shifts, unsociable hours or other premium rates of pay;
- 5.1.22. Overtime history for the preceding twelve (12) Month period;
- 5.1.23. Allowances and bonuses for the preceding twelve (12) Month period;
- 5.1.24. Details of outstanding loan, advances on salary or debts;
- 5.1.25. Cumulative pay for tax and pension purposes;
- 5.1.26. Cumulative tax paid;
- 5.1.27. National Insurance Number;
- 5.1.28. National Insurance contribution rate;
- 5.1.29. Other payments or deductions being made for statutory reasons;
- 5.1.30. Any other voluntary deductions from pay;
- 5.1.31. Pension Scheme Membership;
- 5.1.32. For pension purposes, the notional reckonable service date;
- 5.1.33. Pensionable pay history for three (3) years to date of transfer;
- 5.1.34. Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- 5.1.35. Percentage of pay currently contributed under any added years arrangements.

Medical

- 5.1.36. Sickness and absence records for the immediately preceding four (4) year period; and
- 5.1.37. Details of any active restoring efficiency case for health purposes.

Disciplinary

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

Further information

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

6. **Part B**

6.1. Pursuant to paragraph 1.4 of Annex I, the following information is to be provided twenty-eight (28) calendar days prior to the Relevant Transfer Date:

Employee's full name;

Date of Birth

Home address;

Bank/building society account details for payroll purposes Tax Code.

ANNEX J – TRANSITION MILESTONE PAYMENT PLAN

1. This Annex J to Schedule 3 sets out the Contractor's obligations in respect of the Milestones and Deliverables relating to transition detailed in condition B2 (Transition):

- 1.1. Part A sets out the Milestones, Milestone Acceptance Criteria, Milestone Dates and Milestone Costs;
- 1.2. Part B sets out the Milestone Acceptance and Milestone Rejection criteria
- 1.3. Part C Milestone Payments

2. Definitions

2.1. In this condition the following words and expressions shall have the meanings set respectively against them:

- 2.1.1. "Milestones" shall mean targets or objectives that must be achieved within a specific timescales;
- 2.1.2. "Deliverables" shall mean a tangible or intangible object produced by the Contractor that is intended to be delivered to the Authority;
- 2.1.3. "Milestone Acceptance Criteria" shall mean the criteria that must be demonstrated by the Contractor in order achieve the Milestone;
- 2.1.4. "Milestone Date" shall mean the date the Milestone must be achieved by;
- 2.1.5. "Milestone Cost Percentage" shall mean the percentage (%) payable to the Contractor after completion of a Milestone.

3. PART A: Milestones

3.1. Milestones are the completion of all required Deliverables for the relevant Milestone. Each Milestone has:

- 3.1.1. an associated set of Milestone Acceptance Criteria (MAC), being a detailed set of criteria which the Contractor must demonstrate to the Authority that it has met in order for a Milestone to be achieved;
- 3.1.2. a Milestone Date, being the date on or before which the Contractor must demonstrate to the Authority that each MAC associated with such Milestone has been met; and
- 3.1.3. a Milestone Cost Percentage (%).

3.2. The Milestones table (Table 1) below lists the agreed Milestones, together with the Milestone Acceptance Criteria, Milestone Date and Milestone Cost for each Milestone.

Table 1

Milestone Number	Milestone Deliverables	Milestone Acceptance Criteria	Milestone Date	Milestone Cost Percentage (%)
1	<ul style="list-style-type: none"> - Finalise & Agree Transition Plan - Implement Stakeholder and Communication Plan - Final Security Plan - Final Quality Plan - Updated resourced Transition Schedule - Updated & Agreed Transition Risk, Issue & Opportunity Register - Updated Transition Assumptions List - Agree Authority Dependencies. 	All Deliverables submitted to and accepted by the Authority within the Milestone Date	Within 1 Month of Effective Date of Contract	█ of total Transition Cost detailed in Schedule 2 (SOR)

Milestone Number	Milestone Deliverables	Milestone Acceptance Criteria	Milestone Date	Milestone Cost Percentage (%)
2	<ul style="list-style-type: none"> - Final Customer Satisfaction Plan - Final Business Continuity and Disaster Recovery Plan - Final Sustainable Procurement Plan - Finalise Product Ranges - Products Lists produced and sent to Authorised Accounts. - Implement Ordering System - Security Clearance Security Check (SC) achieved for Key Contractor's Personnel 	All Deliverables submitted to and accepted by the Authority within the Milestone Date	3 Months of Prior to Service Commencement Date	█ of total Transition Cost detailed in Schedule 2 (SOR)
3	<ul style="list-style-type: none"> - Service Commencement Readiness Checks - Updated Through Life Assumptions List - Updated Through Life Risk, Issue and Opportunity Register 	All Deliverables submitted to and accepted by the Authority within the Milestone Date	1 Month prior to Service Commencement Date	█ of total Transition Cost detailed in Schedule 2 (SOR)
4	<ul style="list-style-type: none"> - Milestones 1 – 3 achieved - Final Exit Management Plan - Security Clearance Baseline Personnel Security Standard (BPSS) achieved for Delivery Drivers. 	Milestones 1 – 3 achieved and Deliverables submitted to and accepted by the Authority within the Milestone Date	By Service Commencement Date	█ of total Transition Cost detailed in Schedule 2 (SOR)

3.3. Deliverables shall be submitted to the Authority no later than two (2) Business Days prior to the relevant Milestone Date.

3.4. Any amendment to the Milestones, the Deliverables (including additional Deliverables identified in the Contractor's Transition Plan), the Milestone Acceptance Criteria or the Milestone Cost Percentage (%) will be conducted in accordance with condition A10 (Amendments to Contract).

3.5. The Contractor shall ensure:

3.5.1. delivery of each of the Deliverables set out in Table 1;

3.5.2. achievement of each Milestone on or before the relevant Milestone Date;

4. PART B: Milestone Acceptance and Milestone Rejection

4.1. Milestone Acceptance

4.1.1. If the Contractor requests the Authority to confirm whether it accepts a Milestone and/or Deliverable, the Authority shall consider the Milestone Acceptance Criteria (MAC) for such Milestone and/or Deliverable and shall issue to the Contractor a Notice which confirms:

4.1.1.1. that the Authority accepts:

4.1.1.1.1. on the basis of such assurance, the Authority is satisfied that all elements of the MAC related to such the Milestone have been met;

4.1.1.1.2. a Deliverable which the Contractor has delivered in relation to such Milestone, if the Contractor has met all the requirements for such Deliverable; and/or

4.1.1.1.3. a Milestone Acceptance Criteria for that Milestone, if the Contractor has met all the requirements for such MAC.

4.1.1.2. that the Authority rejects:

4.1.1.2.1. the Deliverable which the Contractor has provided in relation to such Milestone, if it is incomplete, deficient or there remain outstanding actions which have not been resolved to the Authority's satisfaction; and/or

4.1.1.2.2. a Milestone Acceptance Criteria for that Milestone, if the Contractor has not met all the requirements for such Milestone Acceptance Criteria,

4.1.2. Any such Notice which accepts all Milestone Acceptance Criteria for that Milestone shall be a "Milestone Acceptance Notice" for that Milestone, and any other such notice shall be a "Milestone Rejection Notice" for that Milestone.

4.1.3. Provided that the Authority has received all information it reasonably requires on, or before the Milestone Date specified for in the Table 1, the Authority shall issue the notice referred to in paragraph 4.1.2 no more than ten (10) Business Days after the relevant Milestone Date.

4.1.4. The Authority's acceptance of a Milestone pursuant to this clause 4 shall be without prejudice to its rights or remedies under this Contract.

4.2. Milestone Rejection

4.2.1. If the Authority issues a Milestone Rejection Notice in respect of a Milestone:

4.2.1.1. the Contractor shall immediately (and at no cost to the Authority):

4.2.1.1.1. complete all corrections of all Deliverables contributing to failure to achieve the Milestone to the satisfaction of the Authority; and/or

4.2.1.1.2. provide, complete, rectify or amend (as appropriate) any Deliverables; and/or

4.2.1.1.3. complete all other relevant activity associated with the Milestone in Table 1.

4.2.1.2. the Contractor shall promptly escalate the matter to the Authority's Representative (Project Manager) or such other level of seniority within the Contractor's Personnel as the Authority may reasonably require;

4.2.1.3. the Parties shall repeat the procedure set out in clause 4 of this Annex J until the Milestone has been accepted by the Authority;

4.3. In respect of a Milestone which it has previously issued a Milestone Rejection Notice, the Authority may (at its absolute discretion) issue a notice (a "Late Milestone Notice") to the Contractor requiring the Contractor to submit to the Authority the outstanding Deliverables for the relevant Milestone within five (5) Business Days of the relevant Milestone Date (or such other period as may be agreed in writing between the Parties). If the Contractor fails to achieve the Milestone in accordance with this clause 4.3 the Authority may:

4.3.1. retain the payment of the relevant Milestone Cost Percentage (%); and/or

4.3.2. terminate, or partially terminate this Contract with immediate effect by giving Notice to the Contractor.

5. PART C: MILESTONE PAYMENTS

5.1. Payment in respect of Milestones

5.1.1. Following receipt of a Milestone Acceptance Notice in respect of a Milestone, the Contractor shall submit to the Authority an invoice for the relevant Milestone Cost Percentage (%) paid in accordance with condition E2 (Payment).

Annex K to Schedule 3
DFP/001

**ANNEX K – HAZARDOUS ARTICLES, MATERIALS OR SUBSTANCES
SUPPLIED UNDER THE CONTRACT: DATA REQUIREMENTS**

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

Contract No: DFP/001

Contract Title: Overseas Deployable Food

Contractor: Ecolog International Deutschland GmbH

Date of Contract: 01 November 2016

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

* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:) attached in accordance with condition B13 (Supply of Hazardous Material or Substance in Contractor Deliverables)

Contractor's Signature:

Name:

Job Title:

Date: 01 November 2016

* check box (☒) as appropriate

To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

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

ANNEX L – TIMBER AND WOOD – DERIVED PRODUCTS SUPPLIED UNDER THE CONTRACT: DATA REQUIREMENTS

The following information is provided in respect of clause B14.h, quantities are on an annual basis (Timber and Wood-Derived Products):

Schedule of Requirements item and timber product type	Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence	Volume of timber Delivered to the Authority with other evidence	Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy	Total volume of timber Delivered to the Authority under the Contract
Pallets (Eurosize/Ind Size)	209 M3	38,5 M3	51,5 M3	299 M3
Dunnage Material	45 M3		6 M3	51 M3

ANNEX M – CERTIFICATE OF CONFORMITY (COFC)

7. Certificate of Conformity (as required by AQAP 2110)				1. Supplier Serial No.	
2. Supplier (Include Name, Address, E-mail etc.)			3. Contract Number: DFP/001		
			4. Contract Modification Number:		
5. Approved Deviations and/or Concessions:			6. Acquirer (Include Name, Address, Email etc.)		
7. Deliver Address:			8. Applicable to: Partial Delivery Number: Final Delivery Number:		
8. Contract Item#	9. Product Description or Part#	10. Quantity	11. Shipment Document	12. Undelivered Quantity	
13. Remarks or Comments					
14. Supplier Statement of Quality: It is certified that apart from the approved deviation permits/concessions noted in block #5 above, the products listed above conform in all respects to the contract requirements.					
Date:		Supplier Name and Title		Supplier Signature	

ANNEX N – EQUALITY OF INFORMATION (PRICING STATEMENT)

1. The Parties each confirm that the Contract Price(s) as recorded at Appendix 1 to this Annex are as submitted under the Contractors tender under OJEU reference 2016/S 093-167840 dated 12/05/2016 for Overseas Deployable Food using the Restricted Procedure under the Defence and Security Public Contract Regulations 2011 (DSPCR 2011)
2. The Parties each confirm that it is not aware of any material omission or inaccuracy in the facts and pricing assumptions provided by it, on which the Contract Price(s) are based, and which are set out or referenced in Appendix 2 to this Annex.
4. The Parties shall each maintain in confidence the Information provided to it by the other for this Annex and shall be in accordance with condition A25 (Disclosure of Information) of this Contract.
5. The Contract Price(s) set out in this Annex shall form the Baseline Contract Prices for this Contract and shall be subject to Price Review in accordance with condition C2 (Pricing)

Signed
Name
Position
Company
For (insert trading name of Company)

Signed
Name [REDACTED]
Position [REDACTED]
Authority
for the Secretary of State for Defence

Date:

Date: 13 March 2017

Appendix 1 to Annex N – Pricing Schedule and Product Ranges

Dated 13 March 2017 in respect of Contract DFP/001

See Appendix 1 to Annex N (Pricing Schedule and Product Lists version 1)

Appendix 2 to Annex N – Authority Pricing Assumptions

Dated 13 March 2017 in respect of Contract DFP/001

Authority Pricing Assumptions

- a. The Contractor's price submission within Annex A to Schedule 2 (Pricing Schedule) shall be used as a baseline for all Contract Prices (the "Baseline Contract Prices")
- b. The Contractor shall apply the correct relevant pricing formula and comprises the elements broken down as follows:
 - (1) Food Products (Fd) – The index to be used for UK sourced Food Products is the Overall Food Consumer Price Index D7C8 (CPI). For Food Products sourced outside of the UK the index shall be the Food and Agricultural Organization (FAO) Food Price Index. Where either of the Indices do not exist, the Parties shall agree a suitable index;
 - (2) Non-Food (Nf) – allowable costs shall be Catering Consumables, Special Packaging, Janitorial Products and Associated Catering Equipment (excluding the items detailed in sub-clause C3.c.(5) and C3.c.(7));
 - (3) Direct Labour (DL) – Only labour directly attributable to the relevant Exercise / Operation shall be allowable, e.g. an Agent, or on-site Manager to facilitate the supply. These costs cannot be double counted against any element of the Management Fee;
 - (4) The index to be used for Direct Labour is the Office for National Statistics. Where an index does not exist, the Parties shall agree a suitable index;
 - (5) Direct Overhead (Do) – Only Overheads directly attributable to the relevant Exercise / Operation shall be allowable e.g. insurances, Travel and Subsistence (T&S), ICT, utilities, packaging, protective clothing, staff training, , plant machinery lease/hire, refrigerators and generator lease/hire. These costs cannot be double counted against any element of the Management Fee;
 - (6) Security (S) – these costs will be accounted for separately, and as with sub-clause C3.c.(13) the Authority shall consider appropriate costs on a case-by-case basis;
 - (7) Infrastructure (I) – the Contractor may be required to develop local infrastructure, including, but not limited to temporary accommodation and warehousing. The Contractor shall submit evidence to the Authority that demonstrates the use of local infrastructure will delivery best value for money;
 - (8) Transportation (T) – this element shall apply to Contractor's transportation that is owned, hired/leased, or local spot-hire. Allowable costs shall include; vehicles, depreciation (on Contractor owned vehicles only), repair and maintenance, third party transportation, container lease/hire, road taxes, tools, and ferry/tunnel charges;
 - (9) Profit (P) – the Contractor shall only be allowed to apply Profit to the elements in sub-clauses C3.c.(1) – (8). Profit shall not be applied to any other element of the pricing formula.
 - (10) Variable Cost (V) – The Variable Cost is the sum of the elements in sub-clauses C3.c.(1) – (8) against which the Contractor is allowed to apply Profit.
 - (11) Fuel (FI) – The fuel surcharge/rebate mechanism detailed in clauses C3.n of this condition Condition C3 shall apply.
 - (12) Taxation (Tx) – allowable costs shall be Value Added Tax (VAT) and other direct taxation applicable includes any Duties payable under this Contract. The Contractor shall comply with the provisions of Condition E3 (Value Added Tax)
 - (13) Exchange Rate (Ex) – The exchange rate used for any foreign currency will be the MoD General Accounting Rate (GAR). The Authority will consider payment in local currency where Value for Money can be demonstrated by the Contractor.

- (14) Risk (R) – these costs will be accounted for separately where there is the need to deploy in remote and/or hostile environment, and as with sub-clause C3.c.(5) the Authority shall consider appropriate costs on a case-by-case basis;
- (15) Other Surcharges (Os) - allowable costs shall be identified by the Contractor and the Authority shall consider the costs on a case-by-case basis.
- c. Standing Overseas Locations (BFSAI and Kenya) are Permissive Environments.
 - d. Not all elements of the Pricing formula will apply to each exercise or operation and the Authority shall confirm the applicable element.
 - e. Should the Authority declare an exercise or operation will be an Enduring Operation in a Temporary Overseas Location the Parties will review the Pricing Formula to include the additional Articles and/or Services required to support the Enduring Operation.
 - f. Where the Authority has identified an Index in clause C3.c this will be used to cost Variation of Price during the Pricing Reviews. The Variation of Price will be based on the Weighted Average of the relevant Index over the previous three (3) Months.
 - g. If there is a material change in the nature or the basis of any Index so that it becomes unreasonable to use in relation to this Contract, or if the Index is discontinued, the parties shall agree an alternative Index which as closely replicates the original Index as is possible.
 - h. The Contractor will, for any of the elements detailed in clause C3.c of this condition C3, supply such particulars of costs in connection with the relevant elements as may be reasonably required by the Authority.
 - i. The Contractor will permit the same information required in clause C3.g to be verified by the Authority's Representative (Commercial) by inspection of its books, accounts and other documents and records.
 - j. The Contractor will supply such details as the Authority may reasonably require in order that it may be satisfied that the prices paid by the Contractor to its subsidiary companies or firms and to Subcontractors and suppliers are fair and reasonable.

Contractor Pricing Assumptions

ID	Title	Scenario / Exercise	Brief Description
0001	Fuel Price		Fuel Price is based on German Fuel Report Market Transparency Unit for Fuels: www.adac.de
0002	Vehicle / Container Fill Rate	Scenario 1 - Exercise 1	The land solution provided is designed and costed assuming that freight assets fill rate is minimum 90 %.
0003	Transportation Profit		Profit calculation within the pricing schedule is applied to line items 1 and 2 for the exception of items 2 (f) to (j). This contradicts to Condition C3 in Schedule 3 that states the Profit Rate % shall be applied to Item No 1 and 2 with the exception of 2(e) - (j). Ecolog assumes that the calculation in the pricing schedule prevails as the correct application of profit.
0004	Management Fee other cost		We have included our company general overheads into the cost category "other cost" in the Management fee.

0005	transportation cost	Scenario 5	Based on the information provided in the tender, Ecolog has assumed that approx. 90% of the volume for BFSAl will be transported to the Falkland Island while 10% will be transported to Ascension Islands. If this consumption pattern changes, It can impact the associated transportation expenses.
0006	Product alternate pack sizes		Alternate pack sizes, when updating the volumes, have been rounded to create whole numbers.

ANNEX O – CHECKLIST FOR FOOD SUPPLY IN PERMISSIVE ENVIRONMENTS

1. Food Supply in Permissive Environments

1.1. To enable operations and exercises to take place anywhere in the world there will be a requirement for the Contract to operate in Permissive Environments. The supply of Contractor Deliverables to operations and exercises in Permissive Environments will be based on instructions produced by the Authority.

2. Planning Factors

2.1. On deployment to a Permissive location the following factors will influence the requirement for operational feeding and shall be identified by the Authority before deployment using Part 1 of Annex A (Change / Quotation Request Proforma):

- 2.2.1. Number of personnel deploying.
- 2.2.2. The mounting Headquarters.
- 2.2.3. Location of deployment.
- 2.2.4. Duration of deployment.
- 2.2.5. Climate.
- 2.2.6. Subsequent and related deployments.
- 2.2.7. Diplomatic considerations, including any Local Government Initiatives, extant or in development.
- 2.2.8. Collaboration with the host nation and allied forces for the operation.
- 2.2.9. Host Nation Support available.
- 2.2.10. Threat.
- 2.2.11. Acceptable lines of communication
- 2.2.12. Details of the required Product Range.

2.2. The Parties shall develop the approach to be taken in respect of the supply of Contractor Deliverables. In developing the approach, the Parties shall consider, but are not limited to, the following:

- 2.2.1. The amount of notification the Contractor will require before the first Delivery to the Permissive environment exercise or operation.
- 2.2.2. Agreement on the response times for the routine Delivery once initial set up has been achieved.
- 2.2.3. The days of the week and hours in the day that the Contractor will operate.
- 2.2.4. Review the KPIs and Performance Indicators to ensure performance targets are achievable and realistic in respect of Contractor Deliverables to be provided at the Temporary Overseas Location.
- 2.2.5. The duration for which the Contractor Deliverables will be required.
- 2.2.6. The daily amount of items to be supplied under Contract for the exercise or operation.
- 2.2.7. The responsibility for provision of storage and warehousing and other infrastructure, including specialist storage such as freezers.

- 2.2.8. The responsibility for the provision of transport, including specialist transport such as refrigerated vehicles.
 - 2.2.9. Whether or not the Contractor shall be required to provide Catering Consumables and / or Non Food Products.
 - 2.2.10. Whether or not the Contractor shall be required to transport, store and deliver bottled water.
 - 2.2.11. Whether or not the Contractor shall be required to hold a Defined Stock Reserve and, if so, the agreed stock level.
 - 2.2.12. The range of Products to be supplied, including any arrangements for testing or acceptance of new Products.
 - 2.2.13. The method of and responsibility for communications between the Contractor and the Authority.
 - 2.2.14. The method by which the supply of Contractor Deliverables will be priced , including any limit of liability to be employed, and the arrangements for the Contractor to claim Payment in accordance with condition E2 (Payment).
 - 2.2.15. The method of demanding the Contractor Deliverables.
 - 2.2.16. The need for Contractor Support to Operations and the associated policy and approvals processes surrounding such support.
- 2.3. Once the requirement has been agreed between the Parties, in accordance with sub-clauses 2.1 and 2.2 of this Annex O, the Contractor shall submit a completed Part 2 of Annex A (Change / Quotation Request Proforma) to the Authority to confirm the Temporary Overseas Location Agreement.

ANNEX P – CHECKLIST FOR FOOD SUPPLY IN NON-PERMISSIVE ENVIRONMENTS

1. Food Supply in Non-Permissive Environments

1.1. To enable exercises and operations to take place anywhere in the world there will be a requirement for the Contract to operate in Non-Permissive Environments. Based on the anticipated number of military and other entitled personnel the Contractor, will procure and Deliver Products and where requested associated catering services to British Armed Forces and entitled personnel anywhere in the world.

2. Planning Factors

2.1. On deployment to a Non-Permissive location the following factors will influence the requirement for operational feeding and shall be identified by the Authority before deployment: using Part 1 of Annex O (Change / Quotation Request Proforma):

- 2.1.1. Number of Personnel Deploying.
- 2.1.2. The mounting Headquarters.
- 2.1.3. Location of deployment.
- 2.1.4. Duration of deployment.
- 2.1.5. Climate.
- 2.1.6. Subsequent and related deployments.
- 2.1.7. Diplomatic considerations, including any Local Government Initiatives, extant or in development.
- 2.1.8. Collaboration with the host nation and allied forces for the operation.
- 2.1.9. Host Nation Support available.
- 2.1.10. Threat.
- 2.1.11. Acceptable lines of Communication
- 2.1.12. Details of the required range.

2.2. The Parties shall develop the approach to be taken in respect of the supply of Contractor Deliverables. In developing the approach, the Parties shall consider, but are not limited to, the following:

- 2.2.1. The Diplomatic waivers and constraints governing the military operation and the extent to which these will affect or include the Contractor. This could include International and Intergovernmental agreements such as Memoranda of Understanding (MoU), Treaties and other Diplomatic arrangements.
- 2.2.2. The primary and fall back surface and air lines of communication for the Delivery of Products and the distribution points to be utilised. The risk assessment of the chosen routes must be agreed with the lead Headquarters. Transport, storage and distribution of Contractor Deliverables shall be the responsibility of the Contractor unless specifically agreed. Any Authority responsibility for the transport, storage and Delivery must be recorded in the Temporary Overseas Location Agreement.
- 2.2.3. The requirement for CONDO personnel supplied by the Contractor and implementation of CONDO procedures. The requirement for CONDO training and the responsibility for providing training should be agreed.

- 2.2.4. The responsibility for the provision of protection and security for Contractor personnel, items and infrastructure. This may include responsibility for the hire of private security. If Private Security Companies (PSCs) are to be contracted or subcontracted, due consideration to the prevailing policy, approvals process and legal framework must be given which may extend to approval at senior Government Level.
 - 2.2.5. The level of security clearance that Contractor staff will require for the task and the facilities and personnel required to attain or maintain security clearance. Any Authority responsibility for providing facility or personnel clearances should be identified.
 - 2.2.6. The period of notification the Contractor will require to achieve initial operating capability and full operating capability at the Temporary Overseas Location. If necessary, a definition should be agreed for initial operating capability.
 - 2.2.7. Agreement on the response times for the routine Delivery of Products under the Contract once initial set up has been achieved.
 - 2.2.8. The duration for which Contractor Deliverables will be required.
 - 2.2.9. The daily amount of items to be supplied under Contract for the exercise or operation, including any requirement to provide Products to allies and contracted employees.
 - 2.2.10. The days of the week and hours in the day that the Contractor will operate.
 - 2.2.11. Review the KPIs and Performance Indicators to ensure performance targets are achievable and realistic in respect of Contractor Deliverables to be provided at the Temporary Overseas Location.
 - 2.2.12. Any provision of Government Furnished Assets (GFA) , including the duration of issue, liabilities and support arrangements. The responsibility for provision of storage and warehousing and other infrastructure, including specialist storage such as freezers.
 - 2.2.13. The responsibility for the provision of transport, including specialist transport such as refrigerated vehicles.
 - 2.2.14. Whether or not the Contractor shall be required to transport, store and deliver bottled water.
 - 2.2.15. Whether or not the Contractor shall be required to provide Catering Consumables and / or Non Food Products.
 - 2.2.16. Whether or not the Contractor shall be required to hold a Defined Stock Reserve and, if so, the agreed stock level.
 - 2.2.17. The range of Products to be supplied, including any arrangements for testing or acceptance of new Products.
 - 2.2.18. The method of and responsibility for communications between the Contractor and the Authority.
 - 2.2.19. The method by which the supply of Contractor Deliverables will be priced, including any limit of liability to be employed, and the arrangements for the Contractor to claim payment in accordance with condition E2 (Payment).
 - 2.2.20. The method of demanding Contractor Deliverables.
 - 2.2.21. The need for Contractor Support to Operations and the associated policy and approvals processes surrounding such support.
- 2.3. Once the requirement has been agreed between the Parties, in accordance with sub-clauses 2.1 and 2.2 of this Annex P, the Contractor shall submit a completed Part 2 of Annex A (Change / Quotation Request Proforma) to the Authority to confirm the Temporary Overseas Location Agreement.

ANNEX Q – TRANSFER REGULATIONS: STAFF TRANSFER ARRANGEMENTS ON EXIT

1. Employment Information on Re-tender, Partial Termination, Termination or Expiry

1.1. No earlier than two (2) 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):

- 1.1.1. 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;
- 1.1.2. supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Annex 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;
- 1.1.3. provide the information promptly and in any event not later than three (3) Months from the date when a request for such information is made and at no cost to the Authority;
- 1.1.4. acknowledge that the Authority will use the information for informing any prospective New Provider to undertake any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract.
- 1.1.5. inform the Authority of any changes to the information provided under paragraph 1.1.1 or 1.1.2 up to the Subsequent Transfer Date as soon as reasonably practicable.

1.2. Three (3) Months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

- 1.2.1. ensure that Employee Liability Information and such information listed in Part A of Appendix 2 to this Annex relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
- 1.2.2. inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
- 1.2.3. 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.

1.3. No later than twenty-eight (28) calendar 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 to this Annex 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.

1.4. Paragraphs 1.1 and 1.2 of this Annex are subject to the Contractor's obligations in respect of the Data Protection Act 1998 (DPA) and the Contractor shall use its reasonable endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the

consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 1.1 and 1.2. Notwithstanding this paragraph 1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 1.1 or 1.2 above, the Contractor shall provide full data to the Authority no later than twenty-eight (28) calendar days prior to the Subsequent Transfer Date.

1.5. On notification to the Contractor by the Authority of a New Provider or within the period of six (6) 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 ensure that an Employing Sub-Contractor shall not:

- 1.5.1. 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
- 1.5.2. 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
- 1.5.3. 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
- 1.5.4. 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,

1.6. 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 1.1, 1.2, 1.3 or 1.5 of this Annex .

1.7. The Authority may at any time prior to the period set out in paragraph 1.5 of this Annex request from the Contractor any of the information in sections 1.1.1 to 1.1.4 of Appendix 1 to this Annex and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within twenty-eight (28) calendar days of receipt of that request.

2. Obligations in Respect of Subsequent Transferring Employees

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:

- 2.1.1. 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
- 2.1.2. comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

3. Unexpected Subsequent Transferring Employees

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 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 (10) Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- 3.1.1. 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
- 3.1.2. 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 3.1.3.3, serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- 3.1.3. 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:
 - 3.1.3.1. 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 3.1.2;
 - 3.1.3.2. any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
 - 3.1.3.3. 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:
 - 3.1.3.3.1. to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person;
 - 3.1.3.3.2. directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; and
 - 3.1.3.3.3. to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
 - 3.1.3.4. 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);
 - 3.1.3.5. 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 [REDACTED]; and
 - 3.1.3.6. legal and other professional costs reasonably incurred;
- 3.1.4. the Authority shall be deemed to have waived its right to an indemnity under paragraph 3.1.3 if it fails without reasonable cause to take, or fails to procure that any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 3.

4. Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

- 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.

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:

4.2.1. 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;

4.2.2. subject to paragraph 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),

4.3. 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.

4.4. In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority (or a New Provider or any sub-contractor of a New Provider) on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 4.4, 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.

5. Contracts (Rights of Third Parties) Act 1999

5.1. A New Provider may enforce the terms of paragraphs 3 and 4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

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.

5.3. Nothing in this paragraph 5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

6. General

6.1. The Contractor shall not recover any Costs and/or other losses under this Annex 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.

Appendix 1 to Annex Q – Information to be Released on Re-Tendering

1. Contractor personnel-related information to be released upon re-tendering where the transfer regulations apply

- 1.1. Pursuant to paragraph 1.1.2 of this Annex, the following information shall be provided:
 - 1.1.1. 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;
 - 1.1.2. 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;
 - 1.1.3. The preceding twelve (12) Months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
 - 1.1.4. Total redundancy liability including any enhanced contractual payments;
- 1.2. In respect of those employees included in the total at 1.1.1, the following information:
 - 1.2.1. Age (not date of Birth);
 - 1.2.2. Employment Status (i.e. Fixed Term, Casual, Permanent);
 - 1.2.3. Length of current period of continuous employment (in years, months) and notice entitlement;
 - 1.2.4. Weekly conditioned hours of attendance (gross);
 - 1.2.5. Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - 1.2.6. Pension Scheme Membership;
 - 1.2.7. Pension and redundancy liability information;
 - 1.2.8. Annual Salary;
 - 1.2.9. Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - 1.2.10. Details of attendance patterns that attract enhanced rates of pay or allowances;
 - 1.2.11. Regular/recurring allowances;
 - 1.2.12. Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
- 1.3. 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 within twenty-eight (28) calendar days of the Subsequent Transfer Date.
- 1.4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/Potential Providers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1.1.1 of this Appendix 1.

APPENDIX 2 ANNEX Q – PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

1. Part A

1.1. Pursuant to paragraph 1.2 of this Annex, 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:

1.1.1. Personal, Employment and Career:

- 1.1.1.1. Age;
- 1.1.1.2. Security Vetting Clearance;
- 1.1.1.3. Job title;
- 1.1.1.4. Work location;
- 1.1.1.5. Conditioned hours of work;
- 1.1.1.6. Employment Status;
- 1.1.1.7. Details of training and operating licensing required for Statutory and Health and Safety reasons;
- 1.1.1.8. Details of training or sponsorship commitments;
- 1.1.1.9. Standard Annual leave entitlement and current leave year entitlement and record;
- 1.1.1.10. Annual leave reckonable service date;
- 1.1.1.11. Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two (2) years;
- 1.1.1.12. Information of any legal proceedings between employees and their employer within the previous two (2) 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;
- 1.1.1.13. Issue of Uniform/Protective Clothing;
- 1.1.1.14. Working Time Directive opt-out forms; and
- 1.1.1.15. Date from which the latest period of continuous employment began.

1.1.2. Performance Appraisal:

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

1.1.3. Superannuation and Pay:

- 1.1.3.1. Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken during the last two (2) years;
- 1.1.3.2. Annual salary and rates of pay band/grade;
- 1.1.3.3. Shifts, unsociable hours or other premium rates of pay;
- 1.1.3.4. Overtime history for the preceding twelve (12) Month period;
- 1.1.3.5. Allowances and bonuses for the preceding twelve (12) Month period;
- 1.1.3.6. Details of outstanding loan, advances on salary or debts;
- 1.1.3.7. Cumulative pay for tax and pension purposes;
- 1.1.3.8. Cumulative tax paid;
- 1.1.3.9. National Insurance Number;
- 1.1.3.10. National Insurance contribution rate;
- 1.1.3.11. Other payments or deductions being made for statutory reasons;
- 1.1.3.12. Any other voluntary deductions from pay;
- 1.1.3.13. Pension Scheme Membership;
- 1.1.3.14. For pension purposes, the notional reckonable service date;
- 1.1.3.15. Pensionable pay history for three years to date of transfer;
- 1.1.3.16. Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- 1.1.3.17. Percentage of pay currently contributed under any added years arrangements.
- 1.1.4. Medical:
 - 1.1.4.1. Sickness and absence records for the immediately preceding four (4) year period; and
 - 1.1.4.2. Details of any active restoring efficiency case for health purposes.
- 1.1.5. Disciplinary:
 - 1.1.5.1. Details of any active restoring efficiency case for reasons of performance; and
 - 1.1.5.2. Details of any active disciplinary cases where corrective action is on-going.
- 1.1.6. Further information:
 - 1.1.6.1. Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
 - 1.1.6.2. Short term variations to attendance hours to accommodate a domestic situation;
 - 1.1.6.3. Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
 - 1.1.6.4. Information about any maternity or other statutory leave or other absence from work.

2. **Part B**

2.1. Information to be provided fourteen (14) Business Days prior to the Subsequent Transfer Date:

2.2.1. Employee's full name;

2.2.2. Date of Birth

2.2.3. Home address; and

2.2.4. Bank/building society account details for payroll purposes Tax Code.

ANNEX R – Accounting for Property of the Authority – Data & Format Requirements for PSA Records**Format**

The Contractor is not obliged to maintain and report on his PSA records in a format that is different from his original records. If electronic formats are used for reporting, the following formats are acceptable:

- Single MS Access Table
- Unformatted MS Excel Spreadsheet

Other electronic formats may be suitable, subject to agreement with Authority's Representative (Payment) in accordance with condition H4 (Authority Representatives) at Schedule 3 (Terms and Conditions). Reports required at condition G7 (Accounting for Property of the Authority) to Schedule 3 (Terms and Conditions) shall be sent to the Authority's Representative (Payment).

Item Record Information

A record is required for each item of GFA held by the Contractor from information available to the Contractor provided by the Authority and from the Contractor's own inventory management systems.

Serial	Name	Description	Comments
KEY DATA FIELDS			
1a 1b 1c	NATO Stock Number (NSN)	The NSN is to be provided in 3 separate fields, i.e. NSN (4 digits) NC (2 digits) IIN (7 digits)	The NSN is a 13 digit number assigned to an Item of Supply. It consists of the 4 digit NATO Supply Classification (NSC) and the 9 digit National Item Identification Number (NIIN) i.e. Nation Code (NC) + IIN. "Dummy" reference numbers should
2	Contract Number or identification of authorising document or responsible MOD official's details if there is no contract.	Contract Number under which the contractor holds GFA.	If an item is issued against or transferred to a new Contract or other authorising document, Serial 2 details should be updated. The preceding Contract No field is to be completed at Serial 8.
3	Terms of Issue / Loan Type	Contract Work Item (CWI); Contract Work Arising (CWA); Contract Support Item (CSI); Contract Embodiment Item (CEI).	This is the loan category indicating why industry is holding the asset.
4	Part Number	The Original Equipment Manufacturer's part number for the item	Essential if Serial 1 information is not available. A serial number or unique sequence number should be identified for high value stock items. For JTTE insert Tool No.

GENERAL DATA FIELDS			
5	Domestic Management Code/Inventory Management Code (DMC/IMC)	Unique Identifier used to further identify the main equipment to which an item belongs.	Domestic Management Code examples are; IMC (Sea): 0613 DMC (Land): 1VSM DMC (Air): 10S Note - No DMC/IMC starts with a 0 (zero).
6	Description	A description of the Asset	The description on the issuing paperwork should be used.
7	Unit Of Measure	Each, Pack, etc. for each line	Otherwise known as Denomination of Quantity
8	Preceding Contract No		To be completed if an item is transferred to a new-succeeding contract.
9	JTTE Indicator	"Yes" indicator to reflect that JTTE has passed to Issued Property in accordance with condition G5 (Issued Property)	This indicator is to be flagged when the contractor lists the item in the PSA.
10	Prime Contractor	The Prime Contractor AAC Code should be detailed where the item is being reported by a self-accounting subcontractor	
11	Disposal Indicator	Highlights an item which requires disposal: 1 – Obsolete 2 – Surplus 3 – Disposal instructions requested 4 – Disposal instructions received	May relate to an item identified as obsolete or surplus to requirements, or for which disposal instructions have been received.
12	Asset Location	The name of the Site where the contractor holds the item. This description only needs to detail the name of the site and should not exceed 30 characters.	This field only needs to be populated if the asset is held on a site other than the primary site as the primary site is fixed to the AIMS Number.
13	Remarks		Any remarks pertinent to the item or that will better identify ownership

Transactional Information

Transactional information enables Resource Accounting and Budgeting compliant accounting and informs decisions on future requirements and any assessment for disposal, either to scrap or return to a MOD Depot or Unit. A transactional information record is required for each item held by the Contractor, comprising Serial Nos 1, 2, 3 and 4 identified as the **Key Data Fields**, which will form the unique record identifier that will be used by the Assets in Industry Data Centre. No aggregation of individual line entries is required to be undertaken by the Contractor for transactional returns.

Serial	Name	Description	Comments
KEY DATA FIELDS			
14	Opening Balance Data	Reporting period start date.	
15	Quantity Embodied		Only to be recorded when the item has been embodied in the product, i.e. at the point in time when the item loses its own identity.
16	Quantity Returned to MOD		This is to include quantity of items returned to MOD under cover of MOD Form 640 or MOD Form 650.
17	Quantity Disposed		This is to include quantity of items scrapped on site or lost in shops (MOD Form 650A), and items authorised for disposal through DSA or otherwise.
18	Quantity Issued - Other		Any other issue of items not covered by serial 14, 15 or 16. The reason for the issue / transfer is to be recorded in the remarks field.
19	Quantity Received		
20	Stocktaking Adjustments	Stock Adjustments (Qty) as a result of stocktaking losses or gains.	
21	Closing Balance	The total quantity in stock at the close of the reporting period	
22	Closing Balance date	Reporting period end date.	

ANNEX S – Personal Data Particulars

Data Controller	The Data Controller is the Secretary of State for Defence (the Authority).
Data Processor	The Data Processor is the Contractor.
Data Subjects	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: Suppliers, User Accounts
Categories of Data	The Personal Data to be processed under the Contract concern the following categories of data: Name, Address, Telephone number, Email Address
Special Categories of data (if appropriate)	The Personal Data to be processed under the Contract concern the following Special Categories of data: N/A
Subject matter of the processing	The processing activities to be performed under the contract are as follows: The Processor shall set up user accounts to enable end-users of the Controller to communicate and submit electronic orders
Nature and the purposes of the Processing	The Personal Data to be processed under the Contract will be processed as follows: Storage, Communication and Deletion of data to enable end-users of the Controller submit electronic orders
Technical and organisational measures	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: Schedule 7 – Contractor Deliverable Plans; Security Plan identifies all measures to collect, store, process and safeguard all personal data to be protected.
Instructions for disposal of Personal Data	The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): Personal Data to be disposed of by deletion of data from company servers six (6) years after the expiry or earlier termination of the Contract.
Date from which Personal Data is to be processed	Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: N/A

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

ANNEX T – CHECKLIST FOR FOOD SUPPLY IN NEPAL

1. Food Supply in Nepal

1.1. To support BATUK and exercising units in Kenya there is a requirement to for the supply of Contractor Deliverables to Authorised Accounts in the following permanent locations:

1.1.1. British Gurkhas Nepal (BGN) - Kathmandu

1.1.2. British Gurkhas Nepal (BGN) – Pokhara

1.1.3. British Gurkhas Nepal (BGN) – Dharan

1.2. In addition to the above, deliveries will be required to Dharan exercise location during periods of recruitment and training. This location is dependent on the Authority's recruitment and training needs and will required a significant increase to regular Delivery requirements.

2. Planning Factors

2.1. The British Gurkha recruitment period begins in November on an annual basis. The exercise and recruitment program shall be provided to the Contractor prior to the beginning of the recruitment period.

2.2. For each exercise, the Authority shall provide the following, to enable the Contractor to conduct supply chain planning during the recruitment period;

2.1.1. Indicative demand requirements at least 21 Business Days before the beginning of each exercise.

2.1.2. Proposed Delivery Schedule.

2.1.3. Estimated feeding numbers.

2.1.4. Exercise duration.

2.1.5. Whether the Contract Deliverables require appropriate temperature controlled delivery vehicles.

2.1.6. Method of Communication with the Unit.

3. Authority's Responsibilities

3.1. The Authority will be responsible for the following:

3.1.1. Continuous power supply to Contractors Assets at British Gurkhas Pokhara (BGP).

3.1.2. Security of Contractors Assets at BGP

3.2. The Authority will be liable for the following:

3.2.1. Any stock write offs resulting from failure of power, or full or partial loss by fire, flood or similar event unless the event is caused by the Contractor

3.2.2. Damage to Contractors Assets by Authority personnel

4. Contractor's Responsibilities

4.1. The Contractor will be responsible for the following:

4.1.1. Ownership and replenishment of inventory whilst Contractors Assets are utilised at BGP.

4.1.2. Cold chain equipment maintenance, repairs and calibration of Contractors Assets at BGP

- 4.1.3. Access to Contractors Assets at BGP
- 4.2. The Contractor will be liable for the following:
 - 4.2.1. Any stock write offs resulting from failure of power, or full or partial loss by fire, flood or similar event caused by the Contractor
 - 4.2.2. Damage to Contractors Assets by Contractors Personnel



Ministry
of Defence

**Deployable Food Programme
(DFP) Team**

**Schedule 3: Terms and
Conditions**

Contract No: DFP/001

For: Overseas Deployable Food

<p>Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</p> <p>Team Name and address: Commissioning Managing Organisation Logistics Delivery Operating Centre Elm 2B #4237 Abbey Wood Bristol BS34 8JH United Kingdom</p> <p>E-mail Address: [REDACTED]</p> <p>Telephone Number: [REDACTED]</p> <p>Facsimile Number: [REDACTED]</p>	<p>And</p> <p>Contractor Name and address: Ecolog Deutschland GmbH In der Steele 14 40599 Düsseldorf Germany</p> <p>E-mail Address: [REDACTED]</p> <p>Telephone Number: [REDACTED]</p> <p>Facsimile Number: [REDACTED]</p>
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Schedule 3: Terms and Conditions

Contract No: DFP/001

THIS CONTRACT IS MADE ON 13 March 2017

BETWEEN:

The Secretary of State for Defence (the "Authority"); and

Ecolog Deutschland GmbH (registered in Germany under Company Number HRB 65967 whose registered office is at In der Steele, 14 40599 Düsseldorf, Germany (the "Contractor"),

each a "Party" and together the "Parties".

This Contract was advertised under OJEU reference 2016/S 093-167840 dated 14/05/2016 for Overseas Deployable Food using the Restricted Procedure under the Defence and Security Public Contract Regulations 2011 (DSPCR 2011).

In accordance with Condition A13 (Assignment of Contract) Leidos Supply Ltd ("the Managing Agent") will be assigned this Contract to manage, operate and give direction to the Contractor for and on behalf of the Authority upon the Effective Date of Contract.

IT IS AGREED:

A General Conditions

A1. Definitions and Interpretations

- a. The defined terms in this Contract (including the recitals and Schedules) shall be as set out in Schedule 1 (Definitions and Abbreviations).
- b. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
 - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Where BS/EN/ISO 9000 or document in the AQAP 100 series form part of this Contract either by reference in the Conditions or as invoked by such Defence Standards (DEF-STANS) in the 05-90 series as are called up as part of the Contract, the following provisions shall also have effect:
 - (a) 'the Purchaser' means 'the Authority'
 - (b) 'the Purchaser's Representative' means 'the Representative of the Authority'
 - (c) 'Project Management Authority' or 'Progress Authority' means the Authority's Representative (Project Manager).
 - (7) Any decision, act or thing which the Authority is required or authorised to take or

do under this Contract may be taken or done only by the person (or their nominated deputy) authorised to take or do that decision, act, or thing on behalf of the Authority.

- (8) Unless excluded within the Conditions of this Contract required by law:
- (a) references to submission of documents in writing shall include electronic submission; and
 - (b) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that formal evidence of authentication can be provided.

A2. Precedence

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

- (1) Schedule 3 (Terms and Conditions) and all its associated Annexes shall be given equal precedence with Schedule 1 (Definitions and Abbreviations).
- (2) Schedule 2 (Schedule of Requirements (SOR)), Schedule 4 (Statement of Requirement (StOR)) and Schedule 8 (Overseas Programme Assumptions and Information Document);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party and/or Managing Agent becomes aware of any inconsistency, within or between the documents referred to in clause A2.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 A2.a above. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition F8 (Dispute Resolution).

A3. Entire Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Condition A3 shall not exclude liability in respect of any fraudulent misrepresentation.

A4. Duration of Contract

a. For the purposes of this Contract the following shall mean:

- (1) Effective Date of Contract is 13 March 2017
- (2) Service Commence Date is 1 October 2017
- (3) Expiry Date is 30 September 2022

b. This Contract and the rights and obligations of the Parties to this Contract shall take effect on the Effective Date of Contract and shall expire:

- (1) on the Expiry Date; or
- (2) where the Authority elects to extend this Contract in accordance with Condition A4.c below, on the Extended Expiry Date,
- (3) unless it is terminated earlier in accordance with the Conditions of this Contract or by operation of law.

c. The Authority, shall on giving the Contractor written notice, no later than three (3) months' before the Expiry Date, have the right to extend (at its sole discretion) the Term of this Contract up to a period of two (2) years until the Extended Expiry Date.

d. In the period between the Effective Date of Contract and the Service Commencement

Date, the Contractor shall carry out the activities required to assume responsibility for the delivery of the Contractor Deliverables in accordance with Condition B2 (Transition).

A5. Contractor's Warranties and Undertakings

a. The Contractor warrants and represents to the Authority as at the Effective Date of Contract, that:

- (1) it is properly constituted under the laws of the jurisdiction in which it is established;
- (2) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under the Contract;
- (3) all action necessary on the part of the Contractor to authorise the execution of, and the performance of, its obligations under this Contract has been taken;
- (4) no arrangements are in place that have, or may have, the result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any, or all, of the shares of the Contractor;
- (5) the obligations expressed to be assumed by the Contractor under this Contract are, or in the case of any such document executed after the Effective Date of Contract shall be, legal, valid, binding and enforceable to the extent permitted by Law;
- (6) the execution, delivery and performance by it of this Contract does not contravene any provision of:
 - (a) any existing Legislation binding on the Contractor including Legislation which has been enacted but is not yet in force;
 - (b) the memorandum and articles of association of the Contractor;
 - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- (7) no claim is presently being assessed and no litigation, arbitration or administrative proceedings presently in progress or, to the best of the knowledge of the Contractor (having made due enquiry), pending or threatened against it or any of its assets which shall, or might, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- (8) it is not the subject of any other obligation, compliance with which shall, or is likely to, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- (9) is not in breach, nor has any event or circumstance occurred or arisen which, with the giving of notice, lapse of time, termination or satisfaction of any other Condition may become a breach of any of its obligation under this Contract;
- (10) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- (11) the copies of any Contract documents which the Contractor has delivered or, when executed, shall deliver to the Authority, are or, as the case may be, shall be, true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of this Contract which would materially affect the interpretation or application of any such document; and
- (12) in entering into this Contract it has not committed any act that is unacceptable under Law ("Prohibited Act") ,

and the Authority relies upon such warranties and representations.

Contractor Undertakings

b. The Contractor covenants and undertakes with the Authority that for so long as this Contract remains in full force:

- (1) it will obtain, comply with the terms of, and do all that is necessary and within its powers to maintain in full force and effect all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Contract;
- (2) it shall give the Authority's Representative (Commercial) Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract. Such notice shall be given within twenty (20) Business Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement;
- (3) it will not voluntarily enter into liquidation or a dissolution;
- (4) it shall give the Authority's Representative (Commercial) Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- (5) it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Subcontractor;
- (6) it shall not, without the written consent of the Authority's Representative (Commercial) (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares in any company if to do so shall, or might, adversely affect the Contractor's financial standing and its ability to perform its obligations under this Contract and does not contravene Condition A8 (Contractors Obligations).

Status of Contractor Warranties and Undertakings

c. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

A6. Authority Disclosed Data

- a. The Authority gives no representations, warranty or undertaking that the information, documents or data provided represent all the information or data provided to the Contractor for the purposes of this Contract, or obligations to be undertaken by the Contractor under this Contract or that such information, documents or data are true and accurate in all material respects.
- b. The Contractor shall be deemed to have conducted its own analysis and review of all such information, documents and data referred to in clause A6.a and satisfied itself as to the accuracy, completeness and fitness for purpose of such information documents and data.
- c. The Contractor acknowledges and confirms that it shall not be entitled to make any claim against the Authority, whether in damages or additional payments under this Contract on the grounds of any misunderstanding or misapprehension in respect of the Information, documents or data referred to or that incorrect or insufficient information relating to the Contractor Deliverables was given to it by any person, whether or not in the employ of the Authority and/or the managing Agent.

A7. Collaborative Working

- a. The Authority, the managing Agent and the Contractor shall commit to working collaboratively throughout the Term of this Contract.
- b. The Collaborative Working Principles at Schedule 6 are intended to provide a framework within which the Parties and/or the Managing Agent can explore the opportunity of working together for mutual benefit in the context of this Contract.
- c. Where costs are directly attributable to Collaborative Working Principles, each Party and/or the Managing Agent to this Contract shall be liable for their own costs.

A8. Contractor's Obligations

- a. The Contractor shall provide the Contractor Deliverables in accordance with the Conditions of this Contract.
- b. The Contractor undertakes to the Authority that it shall perform or procure that the Contractor Deliverables are delivered and the Contractor's obligations are performed:
 - (1) in an efficient, effective and safe manner;
 - (2) so as to satisfy Schedule 2 (Schedule of Requirements (SOR)) and Schedule 4 (Statement of Requirements (StOR)) of the Contract;
 - (3) in compliance with Legislation;
 - (4) to perform its obligations under this Contract in a manner that will enable the Authority to comply with Legislation
 - (5) in accordance with Good Industry Practice;
 - (6) in accordance with the plans detailed in Schedule 7 (Contractor Deliverable Plans); and
 - (7) to the satisfaction of the Authority.
- c. The Contractor shall discharge its obligations under this Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- d. Any risk assessment which has been, or may be, undertaken in connection with this Contract does not affect the legal relationship between the Parties. The process of risk assessment, including the identification of (or failure to identify) risks and their impacts, risk reduction measures, contingency plans and remedial actions, shall not in any way limit the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under the Contract.

A9. Variations to Specification

- a. The Authority's Representative (Commercial) may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority and/or the Managing Agent, provided that any such variations shall be limited to the extent that they do not materially change the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Variations to the Specification shall be conducted in accordance with Condition A11 (Change Control Procedure)

A10. Amendments to Contract

- a. Except as provided in Condition D2 (Diversion Orders) all amendments to this Contract shall be serially numbered, in writing, issued by the Authority, and agreed by both Parties for a Major Change, as defined in Clause A11.d(2) (Change Control Procedure), and by both Parties and/or the Authority's Representative (Commercial) for Minor Change, as defined in Clause A11.d(3) (Change Control Procedure).
- b. The amendment shall come into force only when the Contractor has returned the DEFFORM 10B as an unqualified acceptance of the Authority's offer.
- c. No Contract amendment shall come into effect unless it satisfies clauses A10.a and A10.b.

d. Where the Authority or the Contractor wishes to introduce a Major Change such as one which is likely to involve a change to the Contract Price, the provisions of Condition A11 (Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A10.a has been issued.

A11. Change Control Procedure

a. Both Parties shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Condition A11.

b. If the Authority requires a Minor Change, the Authority's Representative (Commercial) shall serve a change request in accordance with Part 1 of Annex A to Schedule 3 (Change / Quotation Request Proforma) on the Contractor. If the Authority requires a Major Change, the Authority shall serve a change request in accordance with Part 1 of Annex A to Schedule 3 (Change / Quotation Request Proforma) on the Contractor. The Authority/the Authority's Representative shall allocate a unique reference number to each Change Request raised.

c. The Change Request shall set out the Change required to the Contractor Deliverables to enable the Contractor to provide a written proposal (a "Contractor Quotation") by completing and signing Part 2 of Annex A to Schedule 3 (Change / Quotation Request Proforma).

d. Both Parties shall sign and date the Change Request at Part 1 of Annex A to Schedule 3 (Change / Quotation Request Proforma). The Parties will agree whether this is a Minor or Major Change together with its classification of a Routine or Urgent request defined as follows:-

(1) Minor Change – shall be changes that have a minor impact upon the performance and/or overall price of the Contract. e.g. Temporary Overseas Location Agreements, Exceptional Price Changes, changes to Contractor Deliverable Plans, or Minor changes to Product ranges.

(2) Major Change – shall be changes that have a major impact upon the performance and/or overall price of the Contract. e.g. Introduction of new services.

(3) Each change whether categorised as Minor or Major is to be allocated a timescale for implementation as defined below:

(4) Urgent Changes – shall be changes which shall be progressed in an accelerated timescale e.g.

(5) Agreement of Part 1 in three (3) Business Days or less, Completion of Part 2 in five (5) Business Days or less, review and completion of Part 3 in five (5) Business Days or less.

(6) Routine Changes shall be all changes which do not require the accelerated timescales stipulated under Urgent Changes. Both Parties shall endeavour to progress the Change Request Proforma for Routine Changes in the following timescales; Agreement of Part 1 in five (5) Business Days, Completion of Part 2 in fifteen (15) Business Days or less, Review and Completion of Part 3 in fifteen (15) Business Days or less.

and the timescales for delivery of the Change.

e. Upon receipt of an Change Request the Contractor shall complete Part 2 of Annex A to Schedule 3 (Change / Quotation Request Proforma) which shall include;

(1) Where the Change impacts upon the Contract Price in Schedule 2 (Schedule of Requirements (SOR)) the Contractor shall provide the Authority with cost information to support the Contract Price change.

(2) The date on which the change is proposed to become effective/delivered.

(3) Such other information as the Authority and/or the the Authority's Representative (Commercial) may reasonably require.

f. The price for any Change shall be based on the Contract Prices (including all rates) and shall include, without double recovery, only such charges that are fairly and properly

attributable to the Change.

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

h. As soon as practicable after the Authority and/or the the Authority's Representative (Commercial) receives a completed Contractor Quotation, the Authority and/or the the Authority's Representative (Commercial) shall;

(1) evaluate the Contractor Quotation

(2) where necessary, discuss with the Contractor any issues arising and following such discussions the Authority and/or the the Authority's Representative (Commercial) may modify the Change Request and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Quotation.

i. As soon as practicable after the Authority and/or the the Authority's Representative (Commercial) has evaluated the Contractor Quotation (amended as necessary) the Authority and/or the the Authority's Representative (Commercial) shall:

(1) indicate its acceptance of the Contractor Quotation by completing Part 3 of Annex A to Schedule 3 (Change / Quotation Request Proforma) and where a Major Change is agreed, issuing an amendment to this Contract in accordance with Condition A10 (Amendments to Contract); or

(2) reject the Contractor Quotation and withdrawing (where issued) the Change Request.

j. Only the Authority and/or Authority's Representative (Commercial) is empowered to sign Part 3 of Annex A to Schedule 3 (Change / Quotation Request Proforma). The Contractor shall not commence work on any Change prior to receipt of the signed Part 3.

k. If the Authority and/or the the Authority's Representative (Commercial) rejects the Change Request, it shall not be obliged to give its reasons for such rejection.

l. If the Authority and/or the the Authority's Representative (Commercial) rejects the Change Request in accordance with sub-clause A11.i.(2) of this Condition A11 due to the Contractors Quotation being deemed unacceptable and the Contractor is unwilling or unable to change its Contractor Quotation to the satisfaction of the Authority and/or the the Authority's Representative (Commercial), the Authority reserves the right to invoke Condition D3 (Alternative Sourcing).

m. The Authority and/or the the Authority's Representative (Commercial) shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Quotation has been accepted in accordance with sub-clause A11.i.(1).

A12. Severability

a. If any provision of this Contract (or part of any provision) is held to be invalid, illegal or unenforceable to any extent by any court of competent jurisdiction then:

(1) such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected; and

(2) In the event that any deemed deletion under clause A7.a (Collaborative Working) is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

(3) If the Parties are unable to resolve a dispute arising under this clause A12 within twenty (20) Business Days of the date of the Notice given pursuant to sub-clause A7.a.(c), this Contract the Authority reserves the right to automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Condition A7 (Collaborative Working).

A13. Assignment of Contract

a. The Authority has appointed Leidos Europe Limited as its Delivery Partner for the delivery of Logistics Commodities and Services ("The LCS(T) Delivery Partner"). The LCS(T) Delivery Partner will appoint Leidos Supply Limited as its sub-agent to manage and operate this Contract for and on behalf of the Authority upon the Effective Date of Contract, and to give directions to the Contractor as the Authority's Managing Agent ("The Managing Agent"), within the scope of its authority notified pursuant to clause A13.c. below.

b. Notwithstanding any provisions to the contrary in this Contract, or in any other Agreement between the Parties, at any time during the Term, the Authority may novate the whole of this Contract to the Managing Agent or a third party.

c. The novation of this Contract to the Managing Agent or a third party shall be at the sole discretion of the Authority.

d. The Contractor shall, within the limits of the authority notified to it under clause A13.a treat and deal with and accept the directions and instructions of the Managing Agent as the Authority's agent for the duration of this Contract.

e. Notwithstanding anything else in this Condition A13, the Managing Agent shall not have the authority to amend the Conditions of this Contract or to agree to any Changes under this Contract, other than those permitted in Clause A10.a. (Amendments to Contract), without the written approval of the Authority.

f. Where the Authority notifies the Contractor that it proposes to novate this Contract to the Managing Agent, the Contractor shall promptly take all such steps, carry out all such actions and execute and deliver all such instruments and documentation as may be necessary or expedient to give effect to the novation.

g. Notwithstanding any provisions to the contrary in this Contract (or any other agreement) or the provisions of Condition A25 (Disclosure of Information) the Authority will disclose the whole or any part of this Contract to The LCS(T) Delivery Partner, the Managing Agent and to the LCS(T) Delivery Partner's key subcontractor TVS Supply Chain Solutions Limited, including (without limitation) any relevant confidential and/or commercially sensitive information and the Contractor shall disclose to the Managing Agent any such relevant information as the Authority requests for the purposes of this Contract. Where the consent of any third party is required before confidential information can be disclosed, the Contractor shall use its best endeavours to obtain such consent. This Condition A13 shall be applicable to any Subcontractor, which the Contractor chooses to use to fulfil the requirements of this Contract.

h. There shall be no increase in the agreed Contract Prices or additional sums payable by the Authority arising out of or in connection with the novation of this Contract pursuant to this Condition A13, except in relation to any reasonable, proportionate and necessary administration costs. The Contractor shall only be entitled to claim such costs to the extent necessary to put it in no better or worse a position than if the novation had not taken place.

i. With the exception of the provisions in this Condition A13, clauses a – h, neither Party shall be entitled to assign this Contract (or any part thereof) without the prior written consent of the other Party.

A14. Subcontracting

a. Subcontracting any part of this Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under this Contract.

b. The Contractor shall ensure, to the extent that they are applicable and unless otherwise specified in the contract, that the Conditions of this Contract are reflected in any subcontracts for any part of the Contractor Deliverables. including the relevant additional Conditions in

detailed in Annex B to Schedule 3 (Additional Conditions to be Included in Relevant Subcontracts).

c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:

- (1) a requirement that either party to the sub-contract may release to the Authority and/or the Managing Agent any of those parts of the sub-contract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of this Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and
- (2) shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority
- (3) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) calendar days from receipt of a valid invoice as defined by the sub-contract requirements; and
- (4) Condition A24 (Child Labour and Employment Law) of the Contract; and
- (5) Condition B14 (Timber and Wood-Derived Products) of the Contract.

d. Where the Contractor places any sub-contract with a value of more than [REDACTED] in connection with this Contract, it shall ensure that it has the right to terminate that sub-contract for convenience, in the event that the Authority exercises its right to terminate this Contract under Condition F2 (Termination for Convenience), with twenty (20) Business Days' notice (or such other notice period as the Authority shall give under this Contract).

e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, 'Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://business.base-uk.org/procurement>.

f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority's Representative (Commercial) of the Information required by Condition A30 (Third Party Intellectual Property – Rights and Restrictions) clause A30.a. On receipt of any such notification, the Authority's Representative (Commercial) shall issue a written authorisation to the Subcontractor in accordance with clause A30.g. Any such authorisation shall always be subject to clauses A30.j, A30.k and A30.n as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority's Representative (Commercial). The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition A14 is a matter between the Contractor and the Subcontractor.

g. Where the Contractor subcontracts work under this Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each sub-contract the terms set out in Annex B to Schedule 3 (Additional Conditions to be Included in Relevant Subcontracts) to this Contract. Where it is not practicable to include the terms set out in Annex B to Schedule 3, the Contractor shall report that fact and the circumstances to the Authority.

h. If the Contractor sub-contracts any aspect of this Contract, the Contractor shall indemnify and keep the Authority indemnified and informed in respect of any claims, costs, demands and liabilities of any kind whatsoever in connection with or arising out of the sub-contract which would not have arisen but for the sub-contract.

- i. The Contractor shall be responsible for the management and supervision of Subcontractors employed under this Contract. The sub-contracting of any obligation under this Contract shall not relieve or excuse the Contractor from its obligations to the Authority in respect of the performance of this Contract.
- j. The Contractor shall be responsible for issuing instructions and directions to its Subcontractors and for implementation of the Authority's and or the Managing Agent's instructions and directions. The Contractor shall ensure that any Order, Contract or Agreement entered into with each Subcontractor are entirely consistent with the provisions of this Contract such that the Contractor is able to fully and properly discharge their obligations to the Authority.

A15. Change of Control of Contractor

- a. The Contractor shall inform the Authority's Representative (Commercial) in writing, as soon as practicable if the Contractor will potentially undergo a change of Control. The Contractor shall not be required to submit any Information which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions.
- b. The Authority's Representative (Commercial) shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to the Effective Date of Contract.
- c. Each notice of change of Control shall be taken to apply to all contracts with the Authority.
- d. The Authority may, at its absolute discretion, terminate this Contract by giving written Notice to the Contractor within six (6) Months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority's concerns to the Authority's satisfaction in accordance with clause A15.b or has failed to supply or withheld the Information required under clause A15.a.
- e. If the Authority exercises its right to terminate in accordance with Condition F3 (Authority's Remedies for Breach of Contract) sub-clause F3.a.(4) the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with this Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this clause A15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

A16. Third Party Rights

- a. Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to this Contract to enforce any term of this Contract in their own right and the Parties to this Contract declare that they have no intention to grant any such right.
- b. Where, and only where, either by a term in a Condition which has been expressly included in the Contract or by another Condition which specifically refers to this Condition, the Contract expressly states that a third party shall be entitled to enforce a Condition of the Contract:
 - (1) the said third party shall be entitled to enforce that Condition in his own right;
 - (2) the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other Conditions (including the provisions of this Condition) relevant to the exercise of that right; and
 - (3) the third party's rights shall be subject to any provision in the Contract:

- (a) that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration (such as detailed in Condition F8 (Dispute Resolution)); and
- (b) that stipulates the law and jurisdiction that will govern the Contract (such as Condition A17 (Governing Law)).

A17. Governing Law

- a. Subject to clause A17.d, this Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause A17.d and Condition F8 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein and to the exclusion of all foreign jurisdictions save that a foreign jurisdiction may apply solely for the purposes of giving full effect to this Condition A17 and for the enforcement of any judgement order or award given under the English jurisdiction, 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 this Contract or breach thereof.
- c. Subject to clause A17.d any dispute arising out of or in connection with this 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 A17 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties agree pursuant to this Contract that Scots Law should apply then the following amendments shall apply to the Contract:
 - (1) Clauses A17.a, A17.b and A17.c shall be amended to read:
 - "a. This Contract shall be considered as a contract made in Scotland and subject to Scots Law.
 - b. Subject to Condition F8 (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 this Contract or breach thereof.
 - c. Any dispute arising out of or in connection with this 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 A17 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
 - (2) Clause F8.b shall be amended to read:
 - "In the event that the dispute or claim is not resolved pursuant to clause F8.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause F8.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 this Contract does not, and the performance of this 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 this 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 that the provisions of this Condition A17 shall survive any termination of this Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such termination.

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

A18. Food Supply to the British Forces South Atlantic Islands (BFSAI)

- a. For the supply of Contractor Deliverables to the BFSAI, the Parties shall act in accordance with the responsibilities set out in Annex C to Schedule 3 (Responsibilities for Food Supply in the Falkland Islands).
- b. The Contractor shall comply with applicable Falkland Islands Law.
- c. Where UK Legislation is more stringent than Falkland Islands Law, UK Legislation shall take precedence.
- d. Where either of the following applies;
 - (1) Local Government Agreements or,
 - (2) UK Government Initiatives

the Contractor shall comply with the obligations of sub-clauses A18.d.(1) and (2) and support the use of Local Suppliers where cost and environmental effectiveness and efficiencies are identified by the Contractor.

- e. In exceptional circumstances the Authority reserves the right to specify local sourcing.

A19. Food Supply to Kenya

- a. For the supply of Contractor Deliverables to Kenya, the Parties shall act in accordance with the responsibilities set out in Annex D to Schedule 3 (Checklist for Food Supply in Kenya).
- b. The Contractor shall comply with appropriate Kenyan Law
- c. Where UK Legislation is more stringent than Kenyan Law, UK Legislation shall take precedence.
- d. Where either of the following applies;
 - (1) Local Government Agreements or,
 - (2) An applicable Government Initiative

the Contractor shall comply with the obligations of sub-clauses A19.d.(1) and (2) and support the use of Local Suppliers where cost and environmental effectiveness and efficiencies are identified by the Contractor.

- e. In exceptional circumstances the Authority reserves the right to specify local sourcing.

A20. Food Legislation

- a. The Contractor shall comply fully with all relevant, mandatory provisions of Legislation relating to the supply, distribution and processing of food, unless a higher standard is required by Legislation applicable in the location in which food is delivered, in which case the Contractor shall comply with the more stringent standard. It is the Contractors responsibility to be aware of such legislative requirements.
- b. Exceptionally, where the Contractor is unable to identify a source of supply that meets the requirements of this clause A20.a and Condition A8 (Contractors Obligations), it may propose an alternative legislative framework. Such proposals will be considered by the Authority's Representative (Quality Manager), who may grant an exemption for a defined time period and a limited geographic area. Products that do not meet the requirements of this Condition A20 and Condition B4 (Specifications) shall not be supplied under the terms of this

Contract unless an exemption has been granted under this Condition A20.

A21. Sustainable Development Legislative Requirements

a. The Contractor shall ensure that the economic, social and environmental Legislation related to the subject matter or the execution of this Contract is observed by any servants, employees or agents of the Contractor and any Subcontractors engaged in the performance of the Contract. The Contractor shall take all reasonable steps to ensure that all activities under this Contract shall comply with certified environmental management standards based on ISO14001 or equivalent.

b. If the Contractor becomes aware of any prosecution or proceedings for criminal breaches of the economic, social and environmental Legislation related to the subject matter or the execution of this Contract against the Contractor, any servants, employees or agents of the Contractor and any Subcontractors engaged in performance of the Contract, the Contractor shall immediately notify the Authority's Representative (Commercial).

c. Any convictions during the term of this Contract for criminal breaches of the economic, social and environmental Legislation related to the subject matter or the execution of this Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a breach of Contract under Condition F3 (Authority's Remedies for Breach of Contract).

A22. Common Agricultural Policy

a. In addition to Condition C1 (Contract Price) clause C1.b where Products covered by the regulations of the Common Agricultural Policy are supplied to the Authority by the Contractor for export then the Contractor shall abide by the appropriate regulations and procedures in accordance with serial 067 of Schedule 4 (Statement of Requirement (StOR), in particular HMRC Customs and Excise Notice 800 (latest edition. In doing so, the Contractor shall seek to maximise and accelerate refunds on exports/deemed exported which refunds shall be passed on separately to the Authority. The Contractor shall obtain direction from the Authority's Representative (Commercial) on how these refunds are to be made.

b. While maintaining the quality standards required under the Contract, the Contractor shall obtain the Contractor Deliverables to be supplied from sources which represent the best Value for Money to the Authority, whether these be of EC origin or otherwise.

A23. Equality

a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

b. Without prejudice to the generality of the obligation in clause A23.a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation in the country where this Contract is being performed.

c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Condition A23 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.

d. The Contractor agrees to take reasonable efforts to reflect this Condition A23 in any sub-contract that it enters into to satisfy the requirements of this Contract and to require its Subcontractors to reflect this Condition A23 in their subcontracts that they enter into to satisfy the requirements of the Contract.

A24. Child Labour and Employment Law

a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.

b. The Contractor agrees to use reasonable efforts to reflect this Condition A24 in any sub-contract that it enters into to satisfy the requirements of this Contract and to require its

Subcontractors to reflect this Condition A24 in their subcontracts that they enter into to satisfy the requirements of the Contract.

A25. Disclosure of Information

- a. Subject to clauses A25.d, A25.e and A25.h each Party and/or Managing Agent:
- (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority's Representative (Commercial) or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any subcontract.
- c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses A25.a and A25.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses A25.a and A25.b shall not apply to any Information to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;
 - (2) has the right to use or disclose the Information in accordance with other Conditions of this 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 this 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 A25 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 A25.

f. The Authority may disclose the Information:

- (1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including Value for Money and related purposes;
- (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (4) on a confidential basis to a professional adviser, consultant or other person engaged by the Authority, including benchmarking organisations, for any purpose relating to or connected with this Contract;
- (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

g. Before sharing any Information in accordance with clause A25.f above, the Authority may disclose such Information subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Condition A25, or redact the Information. Any decision to redact information made by the Authority shall be final.

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

i. Nothing in this Condition A25 shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

A26. Publicity

a. Unless expressly permitted in writing by the Authority, the Contractor shall not publish or permit to be published either alone or in conjunction with any other person any information, products, photographs, logos or other media relating to the business of the Authority. The Contractor shall not make any Media announcements or publicise this Contract in any way without the prior written consent of the Authority's Representative (Commercial).

b. Where the proposed publicity material is classified OFFICIAL-SENSITIVE, the provisions of Condition A28 (Official-Sensitive Security Requirements) and Annex E to Schedule 3 (Protection of UK Official and Official-Sensitive Information) shall apply.

A27. Protection of Personal Data

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

- (1) 'Contractor Personnel' means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under the Contract;
- (2) 'Data Loss Event' means any event that results in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
- (3) 'Data Protection Legislation' means
 - (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
 - (b) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; and
 - (c) all applicable Law about the processing of personal data and privacy;
- (4) 'Data Protection Impact Assessment' means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- (5) 'Data Subject Access Request' means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- (6) 'DPA 2018' means the Data Protection Act 2018;
- (7) 'GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679);
- (8) 'Law' means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
- (9) 'LED' means the Law Enforcement Directive (Directive (EU) 2016/680);
- (10) 'Protective Measures' means appropriate technical and organisational measures which includes:
 - (a) pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services;
 - (b) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - (c) regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- (11) 'Sub-processor' means any third Party appointed to process Personal Data on behalf of the Contractor related to the Contract;
- (12) The following expressions shall have the same meanings as in Article 4 of the GDPR:
 - (a) Controller;
 - (b) Processor;
 - (c) Data Subject;
 - (d) Personal Data;
 - (e) Personal Data Breach; and
 - (f) Data Protection Officer.

Data Protection

b. In connection with the Personal Data received under the Contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.

c. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Annex S to Schedule 3 (Personal Data Particulars) by the Authority and may not be determined by the Contractor. The completed Annex S to Schedule 3 shall form part of the Specification for the Contract.

d. The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority will not consider such notification to constitute formal legal advice.

e. The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (1) a systematic description of the envisaged processing operations and the purpose of the processing;
- (2) an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Contract;
- (3) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (4) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

f. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:

- (1) process that Personal Data only in accordance with Annex S to Schedule 3, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (2) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- (3) ensure that:
 - (a) the Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular Annex S to Schedule 3);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - i. have the necessary probity by undertaking the Government's Baseline Personnel Security Standard or other standard as specified in the Contract;
 - ii. are aware of and comply with the Contractor's duties under this clause;

- iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (4) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (a) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (d) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (5) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- g. Subject to clause A27.h, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under the Contract, it:
- (1) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (2) receives a request to rectify, block or erase any Personal Data;
 - (3) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (4) receives any communication from the Information Commissioner or any other regulatory authority;
 - (5) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (6) becomes aware of a Data Loss Event.
- h. The Contractor's obligation to notify under clause A27.g shall include the provision of further information to the Authority in phases, as details become available.
- i. Taking into account the nature of the processing, the Contractor shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause A27.h (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- (1) the Authority with full details and copies of the complaint, communication or request;
 - (2) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (3) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (4) assistance as requested by the Authority following any Data Loss Event;

(5) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under this clause A27.i.

j. The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the Contract.

k. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

l. Before allowing any Sub-processor to process any Personal Data related to the Contract, the Contractor must:

- (1) notify the Authority in writing of the intended Sub-processor and processing;
- (2) obtain the written consent of the Authority;
- (3) enter into a written Contract with the Sub-processor which give effect to the terms set out in this Condition such that they apply to the Sub-processor; and
- (4) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

m. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

n. The Contractor may, at any time on not less than 30 Working Days' notice, revise this Condition by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

o. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

p. Any Contract amendments resulting from clause A27.n and/or A27.o shall be conducted in accordance with any change control procedure as set out in the Contract.

A28. Official-Sensitive Security Requirements

a. In this Condition A28 "Information" means information recorded in any form disclosed or created in connection with the Contract.

b. The Contractor shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the Security Aspects Letter (SAL), in accordance with the Conditions at Annex E to Schedule 3 (Protection of UK Official and Official-Sensitive Information).

c. The Contractor shall include the requirements and obligations set out in clause A28.b in any sub-contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the subcontractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the subcontractor. The Contractor shall also include in the sub-contract a requirement for the subcontractor to flow the requirements of this condition A28 to its Subcontractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

A29. Contractor's Records

The Contractor shall maintain all records in connection with this Contract (expressly or otherwise), and without prejudice to condition A25 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may

require. These records shall be retained for a period of at least six (6) years after the expiry or earlier termination of the Contract.

A30. Third Party Intellectual Property – Rights and Restrictions

a. The Contractor shall promptly notify the Authority's representative (Commercial) 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 this Contract or to use by the Authority and/or the Managing Agent 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 this Contract or subsequent use by the Authority and/or the Managing Agent of anything delivered under this 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 this Contract or subsequent use by the Authority and/or the Managing Agent of anything required to be done or delivered under the Contract;

clause A30.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 A30.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority, the Managing Agent or Contractor, or otherwise) that the manufacture or supply under this 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 A30 shall not apply if:

- (1) the Authority and/or the Managing Agent has made or makes an admission of any sort relevant to such question;
- (2) the Authority and/or the Managing Agent has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause A30.c does not extend to use by the Authority of anything supplied under this 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 this Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use

any model, document or information relating to any such invention or design which may be required for that purpose.

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

g. If, under clause A30.a, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:

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

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

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of this Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this 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 this 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 this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this 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 A30.a.

k. Where authorisation is given by the Authority under clauses A30.e, A30.f or A30.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

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

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

- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under this Contract or otherwise in the performance of the Contract;
 - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
 - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of this 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 A30.a – A30.m represents the total liability of each Party to the other under this 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 A30 by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice;
 - (4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise there from and shall provide such information as the other Party may reasonably require;
 - (5) following a notification under sub-clause A30.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
 - (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in this condition A30 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

A31. Copyright

a. This condition shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, or such other software clause as may appear in this Contract or for which the Authority is otherwise licensed, or to any work deliverable under the Contract.

b. The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under this Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.

c. The Contractor agrees not to publish any copyright work generated under this Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.

d. The Authority shall have, in respect of any copyright work to which this condition A31 applies, a free licence;

(1) to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to sub-clause A31.d.(2) or (3) of this clause, be made available to any third party;

(2) to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes;

(3) to issue the work or any part of the work or any copy of the work or any part thereof to the government(s) of the nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;

provided that, subject to any pre-existing rights of the Authority, sub-clauses A31.d.(2) and (3) above shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract. Sub-clauses A31.d.(2) and (3) shall apply to all works or parts thereof unless otherwise marked by the Contractor in accordance with clause A31.e below.

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

f. The Contractor may mark or include in any copyright work to which this condition A31 applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this condition A31. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.

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

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

A32. Transparency

- a. Subject to clause A32.b but notwithstanding condition A25 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with clause A32.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Annex F to Schedule 3 (Contractors Commercially Sensitive Information).
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A32.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this condition A32 shall affect the Contractor's rights at law.

A33. Liability

- a. The Contractor shall be responsible for the quality and safety of the Contractor Deliverables, except where it can be shown that the safety or quality of the Contractor Deliverables were materially and adversely affected by the Authority's own storage or usage.
- b. Without prejudice to any other right or remedy detailed in condition F3 (Authority's Remedies for Breach of Contract) the Contractor shall be liable in respect of all claims by the Authority for any loss or damage suffered by the Authority, its employees, agents or sub-contractors (including all the costs and expenses) which arise as a result of:
 - (1) Breach by the Contractor, its employees or agents of any of its obligations under this Contract; and/or;
 - (2) Any tortious act or omission, including negligence, of the Contractor, its employees, agents or Subcontractors arising under or in connection with this Contract.
- c. Any commitments (including but not limited to stockholding commitments) entered into by the Contractor to meet this Contract requirement are at its own risk, except where expressly stated in these Conditions or agreed in writing by the Authority's Representative (Commercial).
- d. The Authority shall not be bound to accept or pay for any items other than those actually Ordered quoting an Authorised Account number or requested by the Authority's Representative (Commercial).
- e. The Authority will not accept any liability for any stocks held, with the exception of the requirement for any Defined Stock Reserve in accordance with Schedule 4 (Statement of Requirement (StOR)) serials 033 – 035.

A34. Insurance

- a. Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Annex G (Required Insurances) to Schedule 3 (Terms and Conditions) take out and maintain or procure the taking out and maintenance of the insurances as set out under this condition A34 (Insurance) and Annex G (Required Insurances) to Schedule 3 (Terms and Conditions) and any other insurances as may be required by relevant law or regulation in any territory relative to the execution of this Contract, together the "Required Insurances". The Contractor shall ensure that each of the required insurances is effective in each case not later than the date on which the relevant risk commences.
- b. The Required Insurances shall be maintained from time to time (as far as is reasonably

practicable) on terms no less favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

c. The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

d. The Contractor shall ensure in respect of the third party public and products liability insurance that:

(1) the policy of insurance shall contain an indemnity to principals clause (or additional insured's equivalent) under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage and for which the Contractor is legally liable under this Contract; and

(2) the policy of insurance contains a clause waiving all rights of subrogation or action that insurers may acquire against the Authority, its employees, servants and agents. The provisions sub-clause A34.d.(2) of this condition A34 shall not apply against any Authority employee, servant or agent who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition.

e. Without limiting the other provisions of this Contract, the Contractor shall:

(1) take or procure the taking of all reasonable risk management and risk control measures in relation to this Contract as it would be reasonable to expect of a prudent contractor acting in accordance with good industry practice including but not limited to the investigation and reporting of relevant claims to insurers;

(2) promptly notify the insurers of any relevant material fact under any Required Insurances of which the Contractor is or becomes aware; and

(3) hold all policies in respect of the Required Insurances and cause any insurance broker affecting the Required Insurances to hold any insurance slips and other evidence of placing cover representing any of the Required Insurances to which it is a part and for which it is responsible under this Contract.

f. The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

g. The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

h. The Contractor shall from the date of this Contract and within fifteen (15) days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and meet the requirements of this condition A34 and G (Required Insurances). Receipt of such evidence by the Authority and/or the Managing Agent shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Contract.

i. The Contractor shall notify the Authority's Representative (Commercial) at least five (5) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

j. The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority and/or the Managing Agent receives a claim relating to the Contract, the Contractor shall co-operate with the Authority and or the Managing Agent and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

k. Except where the Authority is the claimant party, the Contractor shall give the Authority's

Representative (Commercial) notice within twenty (20) days after any insurance claim in excess of [REDACTED] relating to the provision of the services or this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) details of the incident giving rise to the claim.

l. Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.

m. Where any Required Insurance referred to in this condition A34 (Insurance) and Annex G (Required Insurances) to Schedule 3 (Terms and Conditions) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

A35. Contractors on Deployed Operations (CONDO)

a. The full provisions of this condition are at Annex H to Schedule 3 (Contractors on Deployed Operations (CONDO)).

b. This condition A35 and Defence Standard (Def Stan) 05-129 (Issue 5) shall become effective when a requirement under this Contract requires the Contractor or its Subcontractors or both, to Deploy to undertake tasks at Expected Work Locations in a CONDO Applicable Area (CAA) identified in Annex H to Schedule 3.

c. If there is any conflict between the provisions of Annex H to Schedule 3 and Def Stan 05-129 (Issue 5), the provisions of Annex H to Schedule 3 shall prevail.

d. The provisions of clauses 1.13, 1.14 and 1.15 of Annex H to Schedule 3 shall take precedence over clause b of G2 (Contractor's Personnel at Government Establishments). The provisions of clauses 1.19, 1.20 and 1.21 of this Annex H to Schedule 3 shall take precedence over clause G2.i. The provisions of clauses 1.22, 1.23 and 1.40 of Annex H to Schedule 3 shall take precedence over clause G2.k.

A36. War Risk Indemnity

a. In this condition:

(1) the expression "War Risks" means risks in respect of which the Contractor's policy of insurance contains an exclusion or limitation upon claims applicable by reason of a War Risk Exclusion Clause;

(2) the expression "War Risk Exclusion Clause" means a provision in the Contractor's policy of insurance excluding or limiting claims by the Contractor by reference to activities that include war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power and attempts at usurpation of power or activities of a similar nature.

(3) the expression "Subcontractor" means a subcontractor at any level of subcontracting.

b. Notwithstanding any other provisions of the Contract, but subject to the provisions of this condition A36, the Authority shall indemnify the Contractor in respect of the liabilities, losses, payments and damage described in sub-clauses A36.b.(1) to (8) inclusive of this clause, where and to the extent that such liabilities, losses, payments or damage are directly attributable to a War Risk and the involvement or requirement for the involvement, for the purpose of work under this Contract of any employees or property of the Contractor in circumstances to which the War Risk Exclusion Clause applies:

(1) all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by employees of the Contractor, their dependants, executors or administrators, in respect of death, injury, sickness, capture or detention of the Contractor's employees, or loss of or damage to employee's property,

and against all costs and expenses reasonably incurred in respect of such claims and proceedings;

(2) all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by third parties (other than the Contractor's employees) arising from the acts or omissions of the Contractor's employees;

(3) any loss of or damage to property of the Contractor, and the loss of use of such property, including any payment made in respect of the necessary hire of suitable property required for performing this Contract or other activity dependent on such property pending the return, replacement or repair of such property, but excluding loss of profit;

(4) any reasonable payment made to any employee or his dependants, executors or administrators ordinarily payable in respect of absence from work as a result of injury, sickness, capture or detention, or other reasonable allowance or compensation or gratuity where such payment was necessarily incurred by the Contractor for the purpose of enabling him to perform this Contract and the payment was not otherwise payable as of right or as a matter of discretion under any statutory provision or by reason of length of employment with the Contractor;

(5) any reasonable payment made in respect of the hire or employment of suitable staff to replace employees absent from work as a result of injury, sickness, capture or detention, when such replacement staff are necessary for performing this Contract or other activity dependent on the availability of the absent employees, pending their return to work;

(6) any payment made, where the Authority has not otherwise made provision (e.g. treatment or transportation provided without charge by the Authority), in respect of:

(a) the reasonable costs of treatment of any employee properly prescribed by a qualified medical practitioner; or

(b) reasonable medical repatriation costs; and

(c) reasonable funeral and associated transportation costs;

(d) where the Contractor has necessarily incurred a commitment to make such payment for the purpose of enabling him to perform the Contract, and the payment was not otherwise payable as of right or a matter of discretion under the pre-existing terms of this Contract of employment of that employee, and that employee's condition would not have arisen by virtue of his employment at his normal place of work;

(7) any loss of, or damage to, or loss of use of property of the Authority made available to the Contractor for the purpose of performing this Contract including any payment made in respect of the hire of suitable property necessary for performing this Contract or other activity dependent on such property pending the return, replacement and/or repair of such property but excluding loss of profit;

(8) any additional payments reasonably incurred to maintain the insurance cover referred to in sub-clause A36.C.(1) below and expressly required by reason of performance of the Contract.

c. The Authority shall not indemnify the Contractor in respect of any claim, proceedings, cost, expense, payment, loss or damage which arises from:

(1) any risks in respect of which the Contractor is insured

(2) any risks which, although uninsured, the Contractor could reasonably have been expected to have been able to insure;

(3) malicious acts, acts of sabotage, strikes, riots, civil commotion or labour disturbances other than where such activities occur in support of or as a direct result of activities described in sub-clause A36.a.(2) above;

- (4) performance of this Contract within the following Territories:
 - (a) The European Union
 - (b) Norway
 - (c) USA
 - (d) Canada
 - (e) Australia
 - (f) New Zealand
 - (g) Other States, except Turkey, which are full members of NATO
 - (5) wilful misconduct, lack of good faith, or negligence on the part of the Contractor, his officers, servants or agents;
 - (6) the wilful disregard of instructions properly given to employees (including but not limited to officers, servants or agents) of the Contractor by the Authority (who for the purposes of this condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);
 - (7) activities undertaken by the Contractor, his officers, servants or agents for purposes other than performance of this Contract except where those activities are in compliance with instructions properly given to employees of the Contractor by the Authority (who for the purposes of this condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);
 - (8) use of any property of the Contractor, his officers, servants or agents for purposes other than performance of this Contract except where such use is in compliance with instructions properly given to employees of the Contractor by the Authority (who for the purposes of this condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);
 - (9) activities undertaken by the Contractor, his officers, servants or agents which contravene any code of conduct or similar guidance issued by the Authority for the purposes of defining the Authority's reasonable expectations of the conduct of the Contractor, his officers, servants or agents in the theatre of operations; or
 - (10) payments of any nature whatsoever to pension funds or schemes operated by or on behalf of the Contractor or any Subcontractor, or any fund or scheme relating to an individual officer, servant or agent of the Contractor, including but not limited to lump sum death benefit, pension payment, compensation payment or redundancy payment.
- d. The Authority shall not indemnify the Contractor in respect of any claims, proceedings, costs, expense, payments, loss or damage for which the Contractor has made provision, other than for insurance cover, in the Contract Price (either as a direct charge, indirect charge or contingency).
- e. The Authority shall not indemnify the Contractor where the Contractor and the Contractor's insurer under the Contractor's policy of insurance in respect of property or third party liability are connected persons. Any question whether the Contractor and its insurer are connected persons shall be determined in accordance with the provisions for determining such question that are set out in section 839 of the Income and Corporation Taxes Act 1988.
- f. Subject to any Subcontractor of the Contractor observing and performing the terms of clause A36.g, such Subcontractor shall be entitled to the benefit of and to enforce this condition A36 as if he were the Contractor.
- g. It is a pre-condition to any liability of the Authority under this indemnity that the Contractor shall:

- (1) as soon as reasonably practicable notify the Authority of any occurrence, claim or proceedings that may be expected to give rise to liability of the Authority under this condition A36;
- (2) provide evidence or proof of any claim, proceeding, cost, expense, loss or damage in the manner and form reasonably requested by the Authority; and
- (3) promptly furnish to the Authority copies of all pertinent papers received by the Contractor and which may reasonably be required by the Authority.

h. The Authority shall make available to the Contractor a copy of the relevant findings of any military Board of Inquiry into any matter which gives rise to a liability on the Authority under this condition.

A37. Framework Agreements

Standing Offer

a. In consideration for the payment of the sum of [REDACTED] by the Authority to the Contractor, the Contractor shall not for the duration of this Contract withdraw from or amend in any way the standing offers contained in this Contract except by agreement in accordance with condition A10 (Amendments to Contract).

Duration Period

b. The duration period of this Contract shall be in accordance with condition A4 (Duration of Contract). This period, shall be the period in which Contractor Deliverables may be ordered and/or tasks authorised by the Authority and/or the Managing Agent under this Contract. The fulfilment of such Orders or tasks may take place after the end of the duration period in accordance with the terms of the Orders or tasks.

Estimated Quantities

c. Where applicable, the quantities referred to in Schedule 2 (Schedule of Requirements (SOR)) are estimates only. The Authority may Order more or less than the estimated quantities and shall not be bound to place Orders or tasks for any of the Contractor Deliverables referred to in the SOR. The Authority shall not be bound to accept or pay for any Contractor Deliverables other than those actually Ordered and/or authorised under the terms of this Contract.

Orders or Tasks (Contracts) for Contractor Deliverables placed or awarded under this Contract

d. A contract for the Contractor Deliverables shall only be created when either the Authorised Account(s) places an Order for each requirement, communicating an acceptance of the Contractor's standing offer or when the Contractor communicates its acceptance to the Authority and/or the Managing Agent for any tasks awarded by the Authorised Account(s) under this Contract by the means specified in this Contract.

e. Occasionally, and subject to the agreement of both parties to this Contract, an Order or task may contain specific conditions additional to those contained in this Contract or which are at variance to those contained in this Contract.

f. The Order or task shall expressly reference this Contract, and shall be in the format specified in this Contract at Schedule 4 (Statement of Requirements).

g. The Contractor shall deliver the Contractor Deliverables within the times specified in this Contract or as otherwise agreed between the parties in accordance with the provisions of this Contract. If it becomes obvious that the Contractor Deliverables will not be delivered within the specified timescale, the Contractor shall immediately notify the Authority and/or the Authority's Representatives of the cause of the delay together with a forecast delivery date. Such information shall be supplied without prejudice to the Authority's rights under this Contract.

h. All correspondence relating to Orders or tasks issued by the Contractor shall be directed to the Authority's Representative (Project Manager) and a copy shall be sent to the Authority's Representative (Commercial).

- i. The Contractor shall either accept or reject an Order or task within the period specified in this Contract or, if no period is specified in this Contract, within ten (10) Business Days.
- j. Where an Order or task has been rejected by the Contractor, the Contractor shall specify in writing the reason for the rejection.
- k. Each Order or task issued by the Authority and/or the Managing Agent and each quotation, Order, task acceptance and rejection issued by the Contractor shall be issued in the manner specified in this Contract. If this Contract does not specify the means by which an Order or task is to be issued then the provisions of clause A11 shall apply.

A38. Food Supply to Nepal

- a. For the supply of Contractor Deliverables to Nepal, the Parties shall act in accordance with the responsibilities set out in Annex T to Schedule 3 (Checklist for Food Supply in Nepal).
- b. The Contractor shall comply with appropriate Nepalese Law
- c. Where UK Legislation is more stringent than Nepalese Law, UK Legislation shall take precedence.
- d. Where either of the following applies;
 - (1) Local Government Agreements or,
 - (2) An applicable Government Initiativethe Contractor shall comply with the obligations of sub-clauses A38.d.(1) and (2) and support the use of Local Suppliers where cost and environmental effectiveness and efficiencies are identified by the Contractor.
- e. In exceptional circumstances the Authority reserves the right to specify local sourcing.

B The Contractor Deliverables

B1. Supply of Contractor Deliverables and Quality Assurance

- a. The Contractor shall:
 - (1) supply the Contractor Deliverables in accordance with condition B4 (Specifications); and
 - (2) comply with all applicable quality assurance requirements specified in Schedule 4 (Statement of Requirements (StOR)) serials 051 to 060 and serial 075 to 076; in providing the Contractor Deliverables.
- b. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Quality Plan detailed in Schedule 7 (Contractor Deliverable Plans).

B2. Transition

- a. The Transition Period shall mean the period between Effective Date of Contract and the Service Commencement Date.
- b. The Contractor shall conduct the activities detailed in the Transition Plan in Schedule 7 (Contractor Deliverable Plans). These activities shall include but are not limited to;
 - (1) Review and finalise the Transition Plan and assign resource to required tasks.
 - (2) Review and finalise the Quality Plan in Schedule 7 (Contractor Deliverable Plans)
 - (3) Review and finalise the Security Plan in Schedule 7 (Contractor Deliverable Plans)
 - (4) Review and finalise Stakeholder and Communications Plan in Schedule 7 (Contractor Deliverable Plans)
 - (5) Review and finalise Customer Satisfaction Plan in Schedule 7 (Contractor Deliverable Plans)

- (6) Review and finalise Business Continuity and Disaster Recovery Plan in Schedule 7 (Contractor Deliverable Plans)
 - (7) Review and finalise the Exit Management Plan in Schedule 7 (Contractor Deliverable Plans)
 - (8) Finalise the Product Ranges in Annex A to Schedule 2 (Pricing Schedule)
 - (9) Review and finalise the Through Life of Contract Assumptions List
 - (10) Conduct a Service Commencement Readiness Check
 - (11) Providing a Management Information template in the required format to comply with the provisions of condition H1 (Management Information)
 - (12) Identify the Relevant TUPE Transfer Date and how the Parties shall comply with the conditions detailed in Annex I to Schedule 3 (Transfer Regulations: Employee Transfer Arrangements On Entry) in respect of the TUPE Transfer Regulations.
- c. Contractors shall ensure that the Contractors Key Personnel are Security Clearance (SC) cleared within three (3) Months from Effective Date of Contract.
- d. The Authority's Representatives, the Managing Agent and the Contractor shall hold transition meetings on a two (2) weekly basis as a minimum to discuss progress in accordance with provisions of this condition B2. The frequency of the transition meetings may vary depending on transition progress and any amendments to the meeting frequency will be confirmed by the Authority's Representative (Commercial).
- e. The Contractor shall submit weekly Transition Progress Reports to the Authority's Representatives to demonstrate progress in accordance with the Transition Milestone Payment Plan at Annex J to Schedule 3. The Transition Progress Report shall set out the progress of and outlook for the Contractor's activities in relation to the Transition Milestone Payment Plan, including:
- (1) key items for discussion with the Authority's Representatives, including any actions or decisions which may be required by the Authority's Representatives;
 - (2) an assessment of overall progress against each milestone number in the Transition Milestone Payment Plan shown as either:
 - (a) Red - the Milestone is unlikely to be achieved, or the Milestone has not been achieved;
 - (b) Amber - the Milestone is at risk of not being achieved; or
 - (c) Green - the Milestone is on target to be achieved, or the Milestone has been achieved.
- f. The Transition Milestone Payment Plan at Annex J to Schedule 3 shall detail:
- (1) the activities required during the Transition Period;
 - (2) the timescales for delivery of each activity and;
 - (3) the amount payable to the Contractor for completion of the activities.
- g. The Transition costs in Schedule 2 (Schedule of Requirements (SOR)) for the provisions detailed in condition B2 (Transition) shall be subject to payment in accordance with the Transition Milestone Payment Plan in Annex J to Schedule 3.
- h. Failure to adhere to the Transition Milestone Payment Plan may constitute a breach of Contract and the Authority may invoke remedies in accordance with condition F3 (Authority's Remedies for Breach of Contract).

B3. Verification and Validation of the Contractors QA Process

- a. Annual audits of the Contractor's Quality Management System (QMS) in accordance with condition G4 (Auditing) will be conducted by the Authority's Representative (Quality Manager). Rights of access to premises are covered by condition G1 (Access to Contractors' Premises).

Inspection by or on behalf of the Authority's Representatives shall in no way alleviate the Contractor from its responsibilities under the Contract.

b. If the Authority's Representative (Quality Manager) identifies a food safety issue or a serious food quality issue regarding the premises or the processes of preparation, packing and distribution, he shall notify the Contractor accordingly. The Contractor shall respond to such notification within a five (5) Business Days. The Authority shall not be liable for any subsequent failure of performance by the Contractor.

B4. Specifications

a. Notwithstanding condition A8 (Contractors Obligations), Products supplied under this Contract, and their packaging and storage shall be provided in accordance with the relevant Conditions herein, and in accordance with the relevant and latest Defence Food Quality Standards, Specification(s) and Schedule 4 (Statement of Requirement (StOR)).

B5. Product Ranges and Lists

a. The Contractor shall provide the Product Ranges as defined in Schedule 1 (Definitions and Abbreviations), Schedule 2 (Schedule of Requirements (SOR)), Schedule 4 (Statement of Requirement (StOR)) and Schedule 9 (Overseas Product Ranges Information Document).

b. All Changes to Product Ranges must be agreed with the Authority and/or the Managing Agent in accordance with condition A11 (Change Control Procedure). The Contractor shall implement a process for the review and selection of Products. The Contractor's process should aim to improve upon the quality, nutrition, Value for Money, security of supply, packaging, exportability and sustainability of Products. The Contractor shall ensure that the process has mechanisms to allow:

(1) The Authority's Representatives to participate in the review and selection of Products; and

(2) Small and Medium Enterprises (SMEs) to offer their Products in an open and transparent way.

c. Changes to the Product Ranges and/or Product Lists shall come into force and supersede extant Product Ranges and/or Product Lists on the date of the signed Part 3 to Annex A (Change / Quotation Request Proforma).

d. The Contractor shall meet the Authority's and or the Managing Agent's requirement for the provision, maintenance and distribution of Product Lists for each Product Range. The Contractor shall distribute Product Lists to Authorised Account correspondence addresses agreed with the Authority's Representatives.

e. The Contractor shall provide electronic and hard copies of the Product Lists in accordance with serial 006 and serial 009 of Schedule 4 (Statement of Requirement (StOR)). Those Authorised Accounts that require either a hardcopy and/or an electronic copy shall be advised to the Contractor, and the Contractor shall distribute accordingly.

B6. Samples

a. Where a food safety / quality issue occurs, samples may be requested by the Authority's Representatives for analysis and shall be provided and delivered by the Contractor to the Authority's Representatives at no cost to the Authority.

B7. Sustainable Procurement Plan

a. The Contractor shall finalise the Sustainable Procurement Plan in Schedule 7 (Contractor Deliverable Plans) and submit to the Authority's Representatives within three (3) Months from the Service Commencement Date.

b. The Sustainable Procurement Plan shall include:

(1) The actions required to fulfil the Sustainable Procurement requirements of this Contract set out in serials 043 and 046 of Schedule 4 (Statement of Requirement (StOR))

- (2) A reporting schedule on implementing the plan;
- (3) An indication of any areas where the Authority, Managing Agent and the Contractor will need to work together to enhance the sustainable delivery of the Contract; and
- (4) A flow-down of the plan and actions to Subcontractors where appropriate
- (5) A sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain.

c. If the information required under this condition B7 has been provided previously to the Authority or Other Government Department (OGD) by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification, providing a copy of the previous submission and confirming they remain valid. The Authority and/or the Managing Agent will advise any amendments required to meet the needs of this Contract.

B8. Overseas Expenditure

a. The Contractor shall report, in writing, to the Authority details of any direct Overseas expenditure valued over [REDACTED] likely to be incurred in the execution of this Contract immediately the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:

- (1) Contract No;
- (2) country in which sub-contract placed/to be placed;
- (3) name, division and full postal address of Subcontractor;
- (4) value of sub-contract as applicable to main Contract;
- (5) date placed / to be placed.

b. If no Overseas Orders valued over [REDACTED] are to be placed, or are placed, the Contractor shall advise the Authority to this effect.

c. For the purpose of clauses B8.a and B8.b Overseas expenditure comprises only those direct payments made by the Contractor to:

- (1) Overseas firms; and
- (2) UK firms, including UK branches or subsidiaries of Overseas firms,

for the supply of Contractor Deliverables imported directly into the UK by the Contractor or by such UK firms.

d. The Contractor shall submit any Information required by clause B8.a and B8.b to the Authority's Representative (Commercial).

B9. Import Licence

If, in the performance of the Contract, the Contractor needs to import material into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

B10. Export Licence

a. The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Contractor Deliverable (including Information and software) to be Delivered under this Contract is or will be subject to:

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

that imposes or will impose end use, end user, re-transfer, re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual

Property specific restrictions of the type referred to in condition A30 (Third Party Intellectual Property – Rights and Restrictions).

b. If requested by the Authority and/or the Managing Agent, the Contractor shall give the Authority and/or the Managing Agent a summary of every existing or expected licence and restriction referred to in clause B10.a and any related obligation or restriction to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, including, to the extent applicable to such obligations or restrictions:

- (1) the exporting nation, including the export licence number (where known);
- (2) the Contractor Deliverables (including Information and software) affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Contractor Deliverables or to anything Delivered or used in the performance or fulfilment of the Contractor Deliverables; and
- (6) any specific restrictions on the end user or on re-transfer or re-export to third parties of the Contractor Deliverables or of anything delivered or used in the performance or fulfilment of the Contractor Deliverable.

The Contractor shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the Authority must comply.

c. When an export licence is required from a foreign government for the performance of the Contract, the Contractor shall promptly consult with the Authority on the licence requirements and, where the Contractor is the applicant for the licence:

- (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable to be Delivered under the Contract, the Contractor, unless otherwise agreed with the Authority, identifies in the licence application:
 - (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and
 - (b) the end use as: For the Purposes of HM Government;
- (2) include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the Ministry of Defence of the United Kingdom";

d. If the Information required under clauses B10.a and B10.b has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of clauses B10.a and B10.b.

e. If the Contractor becomes aware of any changes in the Information notified previously under clause B10.a, B10.b or B10.d that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses, the Contractor shall notify the Authority's Representative (Commercial) promptly of the change.

f. If the Contractor or any Subcontractor in the performance of this Contract needs to export material for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. The Authority and/or the Managing Agent shall provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regard to any defence or security issue that may arise.

g. Where this Contract performance requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence application, grant and maintenance in this Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under this Contract for a risk management plan the Contractor shall submit an Export Licence Plan for agreement with the Authority.

h. The Authority's Representative (Commercial) may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request:

- (1) the Contractor shall, or procure that the Contractor's Subcontractor will, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority;
- (2) the Authority and/or the Managing Agent shall provide sufficient Information, certification and other documentation necessary to support the application for the requested variation; and
- (3) the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

i. Where the Authority provides material (Information and items, including software) to enable the Contractor to perform the Contract, and that material is subject to a non-UK export licence or other related technology transfer control as described in the provisions of clause B10.a:

- (1) the Authority may, or at the request of the Contractor, undertake to give the Contractor a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Contractor's ability to perform the Contract, including, to the extent applicable, to the Contractor's performance of the Contract:
 - (a) the exporting nation, including the export licence number (where known);
 - (b) the items or Information affected;
 - (c) the nature of the restriction and obligation;
 - (d) the authorised end use and end users;
 - (e) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or Information affected; and
 - (f) any specific restrictions on re-transfer or re-export to third parties of the items or Information affected.
- (2) this will not include Intellectual Property specific restrictions of the type mentioned in condition A30 (Third Party Intellectual Property – Rights and Restrictions) in relation to the Authority instead of the Contractor.
- (3) the Contractor and its Subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the Authority and/or the Managing Agent.
- (4) the Contractor shall notify the Authority's Representative (Commercial) immediately if it is unable for whatever reason to abide by any restriction advised by the Authority and/or the Managing Agent to the Contractor under clause B10.j.

j. Where restrictions are advised by the Authority and/or the Managing Agent to the Contractor under clause B10.j, the Authority, the Managing Agent and the Contractor shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a change to the Specification and handled under the terms of condition A9 (Variations to Specification) and the Contract Price or Delivery

schedule or both shall be adjusted as appropriate. If the Contractor is unable to perform this Contract as a result of these restrictions then the Authority and/or the Managing Agent shall consult with the Contractor on alternative solutions requiring amendment of this Contract under condition A10 (Amendments to Contract) and A9 (Variations to Specification) and may terminate this Contract if no alternative solution satisfies the essential terms of the Contract. Termination under these circumstances will be under the terms of condition F2 (Termination for Convenience).

k. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Contract.

B11. Marking of Contractor Deliverables

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

- (1) in accordance with the reference number for each Contractor Deliverable in Schedule 2 (Schedule of Requirements (SOR));
- (2) where the Contractor Deliverable has a shelf life, the marking shall include: the expiry date / date of manufacture, expressed as month (letters) and year (last two figures); and
- (3) ensure that any marking method used does not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

b. Where it is not possible to mark a Contractor Deliverable with the required particulars, these should be included on the package in which the Contractor Deliverable is packed, in accordance with condition B12 (Packaging and Labelling).

B12. Packaging and Labelling

a. The Contractor shall pack or have packed the Contractor Deliverables:

- (1) to ensure that each Contractor Deliverable may be transported and Delivered to the named Consignee in an undamaged and serviceable condition.
- (2) is labelled to enable the contents to be identified without need to breach the package; and
- (3) is compliant with statutory requirements

b. The Contractor shall ensure that each package containing the Contractor Deliverables is labelled to include:

- (1) the name and address of the Consignor and Consignee as specified on the Order including:
 - (a) the Delivery destination / address if not of the Consignee;
 - (b) the transit destination / address (for aggregation / disaggregation, onward shipment etc.);
- (2) the description and quantity of the Contractor Deliverables enclosed;
- (3) the reference number specified in Schedule 2 (Schedule of Requirements (SOR));
- (4) this Contract number and Order number;
- (5) any statutory Hazard markings and any handling markings, including the mass of any package which exceeds 3kg;
- (6) the Packaging level, as specified in Schedule 9 (Product Range Information Document)
- (7) where applicable, any particulars which cannot be marked on each Contractor Deliverable

- (8) the Primary Packaged Quantity (PPQ) (if trade packaging); and
- (9) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;

B13. Supply of Hazardous Material or Substance in Contractor Deliverables

- a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this condition B13. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in Schedule 2 (Schedule of Requirements (SOR)):
 - (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
 - (2) the International Maritime Dangerous Goods (IMDG) Code;
 - (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
 - (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).
- b. Certification markings, incorporating the UN logo, the package code and other prescribed Information indicating that the package corresponds to the successfully designed type shall be marked on the Packaging in accordance with the relevant regulation.
- c. As soon as possible and in any event no later than one (1) Month prior to the Delivery Date for the Contractor Deliverables, the Contractor shall provide to the Authority's Representative (Commercial) by e-mail with attachments in Adobe PDF or MS WORD format or by hardcopy, if only a hardcopy is available:
 - (1) a completed Annex K to Schedule 3 (Hazardous Articles, Materials or Substances Supplied under the Contract: Data Requirements), confirming whether or not to the best of its knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and
 - (2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at clause B13.d, which shall be updated by the Contractor during the period of this Contract if it becomes aware of any new relevant data.
- d. Safety Data Sheets if required under clause B13.c shall be provided in accordance with the REACH Regulations (EC) No 1907/2006 and any additional information required by the Health and Safety at Work etc. Act 1974 and shall contain:
 - (1) Information required by the Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations 2009 and/or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable) or any replacement thereof; and
 - (2) where the Hazardous Contractor Deliverable is, contains or embodies a Radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any isotope); and
 - (3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed;
 - (4) where the Hazardous Contractor Deliverables are ordnance, munitions or explosives, in addition to the requirements of CHIP and/or the CLP Regulation 1272 / 2008 and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- e. The Contractor shall retain its own copies of the Safety Data Sheets provided to the Authority's Representative (Commercial) in accordance with clause B13.d for six (6) years after the end of this Contract and shall make them available to the Authority's Representatives on request.

f. Nothing in this condition B13 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

B14. Timber and Wood-Derived Products

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

- (1) shall comply with Schedule 4 (Statement of Requirements (StOR)); 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 B14.a above, all Timber and Wood-Derived Products supplied by the Contractor under this Contract shall originate from a forest source where management of the forest has full regard for:

- (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and safeguarding the basic labour rights and health and safety of forest workers.

c. If requested by the Authority's Representative (Commercial), the Contractor shall provide to the Authority's Representative (Commercial) Evidence that the Timber and Wood-Derived Products supplied to the Authority under this Contract complies with the requirements of clause B14.a or B14.b or both.

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

e. If the Contractor has already provided the Authority with the Evidence required under clause B14.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfy the provisions of clauses B14.a and B14.b.

f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority's Representatives, in accordance with condition A29 (Contractor's Records).

g. Notwithstanding clause B14.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 B14.a and B14.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 B14.b.

i. The statistical reporting requirement at clause B14.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 A10 (Amendments to Contract).

j. The Contractor shall provide to the Authority's Representative (Commercial), a completed Annex L to Schedule 3 (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 this Contract, or at such other frequency as stated in the Contract. A completed Annex L to Schedule 3 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), is to be provided by e-mail with attachments in Adobe PDF, MS WORD, or if an electronic copy is not available, in hard copy format to the Authority's Representative (Commercial). The Contractor shall send all completed Annex L to Schedule 3 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).

k. The Annex L to Schedule 3 (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 A10 (Amendments to Contract).

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

(1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or

(2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

B15. Certificate of Conformity

a. The Contractor shall provide a Certificate of Conformity (CofC) in accordance with Annex M to Schedule 3 (Certificate of Conformity (CofC)) and any applicable Quality Plan in Schedule 7 (Contractor Deliverable Plans) for any Contractor Deliverables identified by the Authority and/or the Managing Agent that require such certification. A copy of the CofC shall be sent to the Authority's Representative (Commercial) upon each Delivery where applicable.

b. The Contractor shall consider the CofC to be a record in accordance with condition A29 (Contractor's Records).

c. Where demonstration of traceability and design provenance through the supply chain is required by the Authority and/or the Managing Agent the Contractor shall include in any relevant sub-contract the requirement for the Information at Annex M to Schedule 3 (Certificate of Conformity (CofC)). The Contractor shall ensure that this Information is available to the Authority and/or the Managing Agent through the supply chain, upon request in accordance with condition A29 (Contractor's Records).

B16. Contractor Deliverable Plans

a. The Contractor shall provide the Contractor Deliverable Plans detailed in Schedule 7 (Contractor Deliverable Plans) to the Authority's Representatives in accordance with the provisions of Condition B2 (Transition).

b. Upon Service Commencement Date the Contractor Deliverable Plans shall be maintained by the Contractor and reviewed annually.

c. The Contractor shall propose amendments to the Contractor Deliverable Plans for approval by the Authority and/or the Managing Agent in accordance with the Change process detailed in Condition A11 (Change Control Procedure).

C Price

C1. Contract Price

- a. The Contractor shall supply the Contractor Deliverables to the Authority at the Contract Price. The Contract Prices for the Contractor Deliverables shall be in accordance with the prices detailed in Schedule 2 (Schedule of Requirements (SOR)) and the prices in Temporary Overseas Location Agreements authorised in accordance with the process detailed in condition D4 (Supply of Products and Services to Temporary Overseas Locations)
- b. The Baseline Contract Prices and assumptions in Annex N to Schedule 3 (Equality of Information) shall be the starting point for variations to Contract Prices during transition and for Temporary Overseas Location Agreements.
- c. At the end of each Contract Year an annual review of the Baseline Contract Prices shall apply to check the accuracy of the Contract Pricing information to date and set new Baseline Contract Prices for the next Contract Year.
- d. The Contractor shall submit evidence of price variations to the Authority's Representative (Commercial) one (1) Month prior to the end of each Contract Year to validate the new Baseline Contract Prices.
- e. Once agreement has been reached between the Contractor and the Authority's Representative (Commercial) the new Baseline Contract Prices and assumptions will be appended to this Contract in accordance with condition A10 (Amendments to Contract).
- f. Both Parties shall act reasonably and endeavour to agree fair and reasonable Contract Prices. If the Parties can not agree on a fair and reasonable Contract Price then it shall be subject to Condition F8 (Dispute Resolution). The instigation of Condition F8 (Dispute Resolution) shall not stop the commencement or continuation of any Order or Delivery / Collection under this Contract.
- g. If the Authority exercises its right to Extend the Expiry Date of the Contract under clause A4.c, the Baseline Price agreed upon by both Parties for the last contractual year shall be the starting point for pricing Contractor Deliverables under the extension years.
- h. Subject to condition E4 (Tax Compliance) the Contractor shall not make any claim for drawback of UK import duty on any part of the Contractor Deliverables supplied which may be for shipment outside of the UK.
- i. The Contract Price detailed in Schedule 2 (Schedule of Requirements (SOR)) includes the Contractor's management fee. The management fee is for the steady state cost of providing the Authority a service to manage the Contract, including but not limited to the provision of quotations, provision of steady state personnel and general overheads. Profit shall not be allowable against the management fee.

C2. Pricing

- a. Pricing of the Contractor Deliverables shall be set in accordance with Schedule 2 (Schedule of Requirements (SOR)) and the provisions of condition C3 (Pricing Formula).
Standing Overseas Locations (BFSAI, Sennelager Training Centre STC, Kenya and Nepal)
- b. Standing Overseas Locations (BFSAI, Sennelager Training Centre STC, Kenya and Nepal) shall be Fixed Priced and priced in accordance with the pricing formula in clause C3.b of condition C3 (Pricing Formula) and are deemed Permissive Environments.
- c. The Contract Prices for the South Atlantic Range and Kenya Range in Annex A to Schedule 2 (Pricing Schedule) shall come into effect ten (10) weeks prior to Service Commencement Date following the review specified in clause C3. Contract Prices for the Nepal Range shall come into effect upon 1st April 2019.

- d. The Contract Price review, hereafter referred to as 'Pricing Reviews' shall be three (3) months after Service Commencement Date. Contract Prices will then be subject to a review every third month and shall be varied by the relevant index percentage (%) in clause C3.f of condition C3 (Pricing Formula).
- e. Thirty (30) Business Days prior to the start of each Pricing Review the Contractor shall revalidate the Contract Prices in Schedule 2 (Schedule of Requirements (SOR)) for each Product in the South Atlantic Range, Nepal Ranges (Kathmandu & Pokhara) and Kenya Range. Any Variation of Price shall be capped by the relevant index in clause C3.f of condition C3. If the Contractor considers that there is a valid case for a variation in the Contract Price (noting that this is capped by inflation in the relevant index in clause C3.f) then the Contractor shall provide the following to the Authority's Representative (Commercial);
- (1) Updated Products Lists detailing the the proposed Contract Prices.
 - (2) Objective and verifiable evidence to support the Contract Price variation.
- f. Where exceptional market forces effect Products so that the index percentage (%) cap is wholly unbeneficial to the Contractor for those item(s), hereafter referred to as 'Exceptional Price Changes' the Contractor shall submit a request for review as a Change in accordance with the condition A11 (Change Control Procedure);
- (1) The Authority shall consider the Contractors request for Exceptional Price Changes where market forces can be proven to effect Products so that their Contract Prices increase by 15% over and above the index % (cap) for that three (3) Month period.
 - (2) Where Exceptional Price Changes are accepted by the Authority, in accordance with the procedure in condition A11 (Change Control Procedure) the Contract Prices will be included in the Pricing Review for the period in which the request is accepted by the Authority.
- g. Upon completion of the Pricing Review the new Product Lists will come into force on the 1st calendar day of the next Month.
- h. Any additions to the Product Ranges shall be costed in accordance with the procedure in condition A11 (Change Control Procedure). The Contract Price shall be submitted by the Contractor in the Part 2 of Annex A to Schedule 3 (Change / Quotation Proforma) for acceptance by the Authority and/or the Managing Agent. Upon acceptance by the Authority and/or the Managing Agent, the Contractor shall update the relevant Product List and submit to the Authority's Representatives, upon which the Contract Price shall come into effect and thereafter be subject to Pricing Review in accordance with clause C2.d – g of this condition C2.
- i. Alternative and Substitute Products shall be provided by the Contractor at, or below the Contract Price of the Product Ordered.

Temporary Overseas Locations

- j. Products Ordered for Temporary Overseas Locations in Permissive Environments and Non-Permissive Environments and shall be Firm Priced and priced in accordance with Condition C3 (Pricing Formula) for the duration specified in each Request for Quotation in accordance with the procedure detailed in condition D4 (Supply of Products and Services to Temporary Overseas Locations) and baselined against the relevant Baseline Contract Prices in Annex N to Schedule 3 (Equality of Information).
- k. In the event that the Authority extends the duration of an exercise or operation in a Temporary Overseas Location the Contractor shall have the opportunity to review Firm Contract Prices in the Temporary Overseas Location Agreement. The review of Contract Prices shall be in accordance with clauses C2.j, or C2.k and Baselined against the Contract Prices in the agreed Temporary Overseas Location Agreement.

l. In the event of an Enduring Operation declared by the Authority in accordance with clause D4.r of condition D4 (Supply of Products and Services to Temporary Overseas Locations) it shall be Fixed Priced and priced in accordance with clause C3.b of condition C3 (Pricing Formula) and subject to three (3) Monthly reviews. The Pricing Reviews will take place in line with the schedule for the Pricing Reviews detailed at clause C2.d.

C3. Pricing Formula

a. The Contractor shall apply the relevant pricing formula in clauses C3.b – c of this condition C3 for each Pricing Review and for each Contractor Quotation submitted to the Authority in accordance with process in condition D4 (Supply of Products and Services to Temporary Overseas Locations).

b. The pricing formula to be used will be as follows;

$$\sum V + (FI + Tx + Ex + R + Os) = \text{Total Price}$$

$$\text{Where } V = \sum (Fd + Nf + DL + Do + S + I + T) + P$$

c. The pricing formula comprises the following elements defined in Annex A to Schedule 2 (Pricing Schedule) and will be inserted into the formula;

(1) Food Products (Fd) – The index to be used for UK sourced Food Products is the Overall Food Consumer Price Index D7C8 (CPI). For Food Products sourced outside of the UK the index shall be the Food and Agricultural Organization (FAO) Food Price Index. Where either of the Indices do not exist, the Parties shall agree a suitable index;

(2) Non-Food (Nf) – allowable costs shall be Catering Consumables, Special Packaging, Janitorial Products and Associated Catering Equipment (excluding the items detailed in sub-clause C3.c.(5) and C3.c.(7));

(3) Direct Labour (DL) – Only labour directly attributable to the relevant Exercise / Operation shall be allowable, e.g. an Agent, or on-site Manager to facilitate the supply. These costs cannot be doublecounted against any element of the management Fee;

(4) The index to be used for Direct Labour is the Office for National Statistics;

(5) Direct Overhead (Do) – Only Overheads directly attributable to the relevant Exercise / Operation shall be allowable e.g. insurances, Travel and Subsistence (T&S), ICT, utilities, packaging, protective clothing, staff training, plant machinery lease/hire, refrigerators and generator lease/hire. These costs cannot be double counted against any element of the management Fee;

(6) Security (S) – these costs will be accounted for separately, and as with sub-clause C3.c.(13) the Authority shall consider appropriate costs on a case-by-case basis;

(7) Infrastructure (I) – the Contractor may be required to develop local infrastructure, including, but not limited to temporary accommodation and warehousing. The Contractor shall submit evidence to the Authority that demonstrates the use of local infrastructure will delivery best value for money;

(8) Transportation (T) – this element shall apply to Contractor's transportation that is owned, hired/leased, or local spot-hire. Allowable costs shall include; vehicles, depreciation (on Contractor owned vehicles only), repair and maintenance, third party transportation, container lease/hire, road taxes, tools, and ferry/tunnel charges;

(9) Profit (P) – the Contractor shall only be allowed to apply Profit to the elements in sub-clauses C3.c.(1) – (8). Profit shall not be applied to any other element of the pricing formula.

(10) Variable Cost (V) – The Variable Cost is the sum of the elements in sub-clauses C3.c.(1) – (8) against which the Contractor is allowed to apply Profit.

(11) Fuel (FI) – The fuel surcharge/rebate mechanism detailed in clauses C3.o of this Condition C3 shall apply.

(12) Taxation (Tx) – allowable costs shall be Value Added Tax (VAT) and other direct

taxation applicable includes any Duties payable under this Contract. The Contractor shall comply with the provisions of Condition E3 (Value Added Tax)

(13) Exchange Rate (Ex) – The exchange rate used for any foreign currency will be the MoD General Accounting Rate (GAR). The Authority will consider payment in local currency where Value for Money can be demonstrated by the Contractor.

(14) Risk (R) – these costs will be accounted for separately where there is the need to deploy in remote and/or hostile environment, and as with sub-clause C3.c.(5) the Authority shall consider appropriate costs on a case-by-case basis;

(15) Other Surcharges (Os) - allowable costs shall be identified by the Contractor and the Authority shall consider the costs on a case-by-case basis.

d. Not all elements of the Pricing formula will apply to each exercise or operation and the Authority shall confirm the applicable elements in the Request for Quotation to the Contractor in accordance with Condition D4 (Supply of Products and Services to Temporary Overseas Locations)

e. In the event the Authority declares an exercise or operation will be an Enduring Operation in a Temporary Overseas Location the Parties will review the Pricing Formula to include the additional Contractor Deliverables and/or Services required to support the Enduring Operation.

f. Where the Authority has identified an index in clause C3.c of this Condition C3, this will be used to cost Variation of Price during the Pricing Reviews. The Variation of Price will be based on the Weighted Average (Months) of the relevant index over the previous three (3) Months in accordance with the following formula;

$$V = P (Wn/Wm) - P$$

Where:

V represents the Variation of Price

P represents the Contract Price stated in the Annex A to Schedule 2 (Pricing Schedule)

Wn represents the Weighted Average index figure over the previous three (3) Month period.

Wm represents the Weighted Average index figure over the three (3) Month period previous to Wn.

g. The Variation of Price calculated using the above formula in clause C3.f of this Condition C3 shall be applied to the relevant Contract Prices in accordance with clauses C2.d and C2.e in Condition C2 (Pricing).

h. If there is a material change in the nature or the basis of any index so that it becomes unreasonable to use in relation to this Contract, or if the index is discontinued, the parties shall agree an alternative index which as closely replicates the original index as is possible.

i. The Contractor shall, for any of the elements detailed in clause C3.c of this Condition C3, supply such particulars of costs in connection with the relevant elements as may be reasonably required by the Authority and/or the Managing Agent.

j. The Contractor shall permit the same information required in clause C3.g to be verified by the Authority's Representative (Commercial) by inspection of its books, accounts and other documents and records.

k. The Contractor undertakes to maintain and on request supply such details as the Authority and/or the Managing Agent may reasonably require in order that it may be satisfied that the prices paid by the Contractor to its subsidiary companies or firms and to Subcontractors and suppliers are fair and reasonable.

Pricing Transition

- I. The Baseline Contract Prices in Annex N to Schedule 3 (Equality of Information) shall be subject to review ten (10) weeks prior to Service Commencement Date. The Baseline Contract Prices shall be subject to variation in accordance with the following formula and shall take immediate effect following that review;

Baseline Contract Price at Effective Date of Contract = (A)

Ten (10) weeks prior to Service Commencement Date - Effective Date of Contract = (B) days

Weighted Average index variation over (B) day period = (C)%

Baseline Contract Prices from ten (10) weeks prior to Service Commencement Date = (A) + (C)%

Fuel Cost Review Mechanism

- m. Using the Allgemeiner Deutscher Automobil-Club Monthly fuel price report (<https://www.adac.de/>) the base rate of fuel per litre for this Contract is 120.12 pence per litre (exclusive of VAT). Fuel represents 10.45% of the Contractor's operating costs. The following fuel surcharge/rebate mechanism shall apply:

(1) Should the price of fuel per litre increase, or decrease against the base rate for a complete three (3) Month period by more than 10% then a surcharge or rebate based on the Contractor's resultant increase or decrease in operating costs shall be applied for the subsequent three (3) Month period of operation and prices at Annex A to Schedule 2 (Pricing Schedule) shall be adjusted for the subsequent three (3) Month period. This procedure shall be applied at each Pricing Review throughout the life of the Contract.

(2) The resultant increase or decrease in operating costs shall be based on the percentage increase/decrease in fuel costs compared to the fuel base rate multiplied by the percentage of the Contractor's operating costs. For example, if the cost of a litre of fuel compared to the base rate increased or decreased by 17% for a full 3 month period and fuel costs represented 25% of the Contractor's operating costs; then the surcharge/rebate would be $17\% \times 25\% = 4.25\%$ and prices would be adjusted by 4.25% for the subsequent three (3) Month period.

C4. Retention of Profit

- a. The Management Information provided by the Contractor in accordance with Conditions H1 (Management Information) and H2 (Key Performance Indicators) shall be used to calculate the profit payable for the Month in accordance with the mechanism set out in this condition C4 and tables 1-2 below.
- b. Performance related to payment of profit shall be measured against the following KPI's; 1 (Availability (Products)), 2 (Delivery / Collection) 3 (Quality) and 4 (Management Information) at Schedule 5 (Key Performance Indicators (KPIs)).
- c. Payment of Profit – retention.
- (1) Table 1 - 2 below determines the Contractors profit according to the achievement of KPIs for the Month. In order to qualify for the full profit the Contractor must meet the minimum performance levels for each KPI 1 - 4.

Pass/Fail for Month across all KPIs	Profit % payable.
PASS	Profit = 100%
FAIL	See Table 2

Table 1 - Profit Matrix

Number of KPIs Failed	Profit % retained after any rolling two (2) Month period
4	██████
3	████
2	████
1	████

Table 2 – Profit Retention for Failure of Overall KPIs.

(2) Where the Contractor fails a single KPI within a Month the Contractor shall have the following Month to rectify the failure. Any subsequent failure shall result in the retention of Profit for the Month in which the original KPI failure had occurred. Further failure of a KPI shall incur the retention of profit for the previous Month.

(3) Where the Contractor fails multiple KPIs within a Month, the Contractor shall have the following Month to rectify the failures. Any subsequent failures shall result in the retention of Profit for the number of KPI failures within that Month up to a maximum of the recorded KPI failures during the previous Month, for example;

- (a) Month 1 = 2 KPI failures = █████ profit retention
- (b) Month 2 = 1 KPI failure, therefore █████ profit retention of Month 1 costs
- (c) Month 3 = 2 KPI failures, therefore █████ profit retention of Month 2 costs
- (d) Month 4 = All KPIs passed, therefore no profit retention

Further failure of a KPI shall incur the retention of profit for the previous Month.

d. Profit retained shall mean permanent retention. The Contractor shall not receive payment for this proportion of their Profit because performance is deemed to be below the acceptable performance level.

e. The Authority's Representative (Commercial) shall identify the amount of profit to be retained following receipt of the Contractor's invoice and invoice breakdown in accordance with Condition E1 (Invoicing) in a Month where KPI failure(s) occur(s). If KPI failure occurs in the following Month in accordance with sub-clauses C4.c.(2) or C4.c.(3) the profit identified for retention shall be recovered, minus the relevant percentage where KPIs have been achieved.

f. Profit retention shall be recovered from the invoice in the Month following the original failure of the KPI(s).

D Ordering and Delivery

D1. Ordering

- a. The Contractor shall ensure that Orders submitted under this Contract are accepted only from Authorised Accounts.
- b. Additions and deletions to the list of Authorised Accounts will be notified by the Authority's Representative (Project Manager) and the Contractor shall complete any administrative processes such that a new account can place Orders within two (2) Business Days after notification.
- c. The Contractor shall ensure that Orders can be received as required by serial 012 and serial 13 of Schedule 4 (Statement of Requirement (StOR))
- d. Where Products Ordered are not available, Substitutions and Alternatives shall be offered prior to Order confirmation. The Authorised Account shall advise the Contractor whether the proposed Substitutes and Alternatives are acceptable.
- e. The Contractor shall offer one or more Delivery Windows prior to Order confirmation. These Delivery Windows shall be no later than the Delivery lead times set out in Condition D5 (Delivery / Collection) or in accordance with a Temporary Overseas Location Agreement and the Authorised Account shall advise the Contractor of its preferred Delivery Window prior to Order confirmation.
- f. Notwithstanding the provisions of Condition D2 (Diversion Orders) in the exceptional event that the Consignee address must be altered between Order and Delivery, the following shall apply;
 - (1) If the Delivery has not left the supplying depot, delivery shall be made to the new address on the required day of delivery, unless a significant change to the delivery address has occurred;
 - (2) If the Delivery has left the supplying depot and the new address is within one (1) hour of driving of the original Delivery address, the vehicle shall be re-directed to the new address;
 - (3) If the Delivery has left the supplying depot and the new address is not within one (1) hour of driving of the original address, the Delivery shall be made the following day if acceptable to the Authorised Account, otherwise sub-clause D1.g.(3) shall apply;
- g. In the exceptional event that the Order is wholly or partially cancelled between Order and Delivery, the following shall apply;
 - (1) If the Order is cancelled on the day before expected Delivery, the Authority shall have no liability;
 - (2) If the Order is cancelled on the day of the delivery and has not left the supplying depot the Authority shall be liable to pay the costs of the chilled foods, fresh produce and hire costs where the Contractor is unable to redeploy the Contractor Deliverables and only where loss can be demonstrated by the Contractor;
 - (3) If the Order is cancelled on the day of the Delivery and has already left the supplying depot, the Authority shall be liable to pay the costs of the chilled foods, fresh produce and hire costs where the Contractor is unable to redeploy the Contractor Deliverables and only where loss is incurred by the Contractor only where loss can be demonstrated by the Contractor.
- h. Any reimbursement for losses demonstrated by the Contractor in accordance with sub-clauses D1.g.2 and D1.g.3 will be paid if deemed reasonable costs and the decision to pay is at the sole discretion of the Authority

D2. Diversion Orders

- a. The Authority's Representative, or Authorised Accounts shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be

subject to a Diversion Order.

b. Where necessary the Authority's Representatives, or Authorised Accounts may issue (or having issued, may cancel) a Diversion Order for urgent Delivery of the Contractor Deliverables identified in it:

- (1) where a Diversion Order is issued the Contractor Deliverables are to be Delivered by the quickest means available, unless otherwise directed;
- (2) if the terms of the Diversion Order are unclear, the Contractor shall contact the Authority's Representative, or Authorised Account who issued it immediately for clarification or further instruction, copying the Authority's Representative (Commercial) in on all correspondence;
- (3) the Contractor shall be entitled to any reasonable additional Delivery and Packaging costs generated in complying with the Diversion Order or cancellation thereof, claims for which are to be submitted by the Contractor to the Authority's Representative (Commercial) together with appropriate receipts and shall be priced and agreed in writing as an amendment to this Contract in accordance with Condition A10 (Amendments to Contract). The Contractor shall not delay complying with the Diversion Order whilst awaiting agreement of any additional Delivery and Packaging costs.

D3. Alternative Sourcing

a. The Authority reserves the right to purchase Contractor Deliverables from sources other than the Contractor including but not limited to the following circumstances:

- (1) For military operational reasons including, but not limited to: host nation support, collaboration with allies, overriding Memoranda of Understanding (MOU) or in the reasonable judgement of the Authority and/or the Managing Agent;
- (2) Where small groups of personnel can be fed more cost effectively.
- (3) Where this Contract does not provide Fixed or Firm prices and the Authority and/or the Managing Agent wishes to conduct a test of the market.
- (4) Where the Authority has rejected a Contractors Quotation in accordance with clause A11.1 of Condition A11 (Change Control Procedure)
- (5) Where extant food supply contracts are in operation.
- (6) Where the Contractor delays Delivery and the alternative Delivery Window is not acceptable to the Authorised Account.

b. Where entitled to do, Authorised Accounts shall be permitted to spend Non-Public Funds through this contract. The Authority will facilitate expenditure with the Contractor of Non-Public Funds where this is in the mutual interest of the Authority and the Contractor. Decisions to spend Non-Public Funds lie with the Authorised Accounts.

D4. Supply of Products and Services to Temporary Overseas Locations

a. For supply of Contractor Deliverables to Temporary Overseas Locations that are within Permissive Environments, the Authority and/or the Managing Agent will, where reasonably practicable, give the minimum period of notice from Contractor receipt of Part 2 of Annex A to Schedule 3 (Change / Quotation Request Proforma) to first delivery of the Contractor Deliverables :

- (1) Six (6) weeks inside Europe or;
- (2) Ten (10) weeks for outside Europe.

b. In accordance with Annex O to Schedule 3 (Checklist for Food Supply in Permissive Environments) the Authority's Representatives, in consultation with the Contractor shall facilitate development of the Temporary Overseas Location Agreement. Pricing shall be in accordance with Condition C2 (Pricing) and claims for payment shall be in accordance with Conditions E1 (Invoicing) and E2 (Payment).

c. For Deliveries relating to Non-permissive Environments, the Authority's Representatives

shall, within a reasonable notification period, provide the Contractor with planning factors in accordance with clause 2 of Annex P to Schedule 3 (Checklist for Food Supply in Non-Permissive Environments).

d. In accordance with Annex P to Schedule 3 (Checklist for Food Supply in Non-Permissive Environments), the Authority's Representatives in consultation with the Contractor shall facilitate development of the Temporary Overseas Location Agreement. Pricing shall be in accordance with Condition C2 (Pricing) and payment in accordance with Conditions E1 (Invoicing) and E2 (Payment).

e. Where the Contractor is providing Contractor Deliverables under this Contract to a Non-Permissive Environment, the Contractor shall be expected to take reasonable precautions against the effect of hostile acts and/or threats to security.

f. Where either of the following applies to the Temporary Overseas Location;

- (1) Local Government Agreements or,
- (2) An applicable Government Initiative

the Contractor shall comply with the obligations of sub-clauses A18.d.(1) and (2) and support the use of Local Suppliers where cost and environmental effectiveness and efficiencies are identified by the Contractor.

g. In exceptional circumstances the Authority and/or the managing Agent reserves the right to specify local sourcing.

h. The Contractor shall supply and maintain against each Temporary Overseas Location Agreement a Business Continuity and Disaster Recovery plan.

Temporary Overseas Location Agreements

i. Where the Authority and/or the Managing Agent requires a Temporary Overseas Location Agreement it shall serve a Quotation Request (a "Request for Quotation") in accordance with Part 1 of Annex A to Schedule 3 (Change / Quotation Request Proforma) on the Contractor. The Authority's Representatives shall allocate a unique reference number to each Quotation Request raised.

j. The Request for Quotation shall set out the requirements for Contractor Deliverables in accordance with Annex O to Schedule 3 (Checklist for Food Supply in Permissive Environments) or Annex P to Schedule 3 (Checklist for Food Supply in Non-Permissive Environments) to enable the Contractor to provide a written proposal (a "Contractor Quotation") by completing Part 2 of Annex A to Schedule 3 (Change / Quotation Request Proforma) and Appendix 1 to Annex A (Contractor Quotation Deliverables).

k. Upon receipt of a Request for Quotation, the Contractor shall complete Part 2 which shall include the quotation for the Contractor Deliverables to fulfil the requirements detailed in the Request for Quotation.

l. The price for any Request for Quotation shall be based on the prices (including all rates) already agreed in the Contract.

m. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Request for Quotation, the Contractor shall deliver to the Authority's Representatives a Contractor Quotation.

n. As soon as practicable after the Authority's Representatives receives a completed Contractor Quotation, the Authority's Representatives shall;

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

- o. As soon as practicable after the Authority's Representatives have evaluated the Contractor Quotation (amended as necessary) the Authority's Representative (Commercial) shall:
- (1) indicate its acceptance of the Contractor Quotation by completing Part 3 of Annex A to Schedule 3 (Change / Quotation Request Proforma); or
 - (2) reject the Contractor Quotation and withdrawing (where issued) the Request for Quotation.
- p. Only the Authority's Representative (Commercial) is empowered to sign Part 3. The Contractor shall not commence work prior to receipt of the signed Part 3.
- q. If the Authority's Representatives reject the Contractor Quotation, it shall not be obliged to give its reasons for such rejection.
- r. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Quotation has been accepted in accordance with sub-clause D4.n.(1).
- s. If the Temporary Overseas Location Agreement requires amending after acceptance by the Authority's Representatives, the Contractor as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such modification, submit an amended Contractor Quotation and clause D4.m shall apply.
- t. In the event the Authority has a requirement for an Enduring Operation it shall inform the Contractor by stating so in either;
- (1) a new Request for Quotation or;
 - (2) an amendment to an existing Temporary Overseas Location Agreement in accordance with this condition D4.

D5. Delivery / Collection

- a. The Contractor shall offer multiple Delivery Windows within the following lead times, unless the Consignee specifically requests a longer lead time:
- (1) During the 3rd Business Day from Order placement for Deliveries of Contractor Deliverables to Standing Overseas Locations;
 - (2) For Temporary Overseas Locations, in accordance with the terms of the relevant Temporary Overseas Location Agreement and condition D4 (Supply of Products and Services to Temporary Overseas Locations).
- b. Failure of the Contractor to deliver the Contractor Deliverables within the agreed Delivery Window shall give the Authority the right to cancel all or part of the Order and release the Authority from any obligation to pay for any part of the Order so cancelled. For the purposes of this condition, clause D1.g of condition D1 (Ordering) shall not apply.
- c. The Contractor shall advise the Authority's Representatives and Authorised Account of any delays and where possible the Authorised Account will agree an alternative Delivery Window. If an alternative Delivery Window is not acceptable the Authorised Account shall have the right to cancel the Order and purchase in accordance with sub-clause D3.a.(5) of condition D3 (Alternative Sourcing) and may be subject to condition F3 (Authority Remedies for Breach of Contract).
- d. Orders cancelled under clause D5.b shall be regarded as Ordered but not Delivered for the purposes of performance measurement in accordance with Schedule 5 (Key Performance Indicators (KPIs)) and condition H2 (Key Performance Indicators)
- e. The Contractor or its Subcontractors shall be responsible for the safe transportation of the Contractor Deliverables supplied under this Contract to the Consignee.
- f. 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 Consignee as detailed on the Order in advance of the delivery date to confirm administrative arrangements for Delivery and provide any Information pertinent to the Delivery requested;
 - (2) comply with any special instructions for arranging Delivery;
- g. Where the Contractor Deliverables are to be collected by the Authorised Account (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the consignee as detailed on the Order in advance of the Delivery Date to confirm specific arrangements for Collection and provide any Information pertinent to the Collection requested;
 - (2) comply with any special instructions for arranging Collection.
 - (3) ensure that the Contractor Deliverables are available for Collection by the Authorised Account from the Consignor by the Delivery Date between the hours agreed by the Parties; and
- h. The Contractor shall ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Contractor.
- i. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
 - (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause D5.g; or
 - (2) on the Collection of the Contractor Deliverables from the Consignor by the Authorised Account once they have been made available for Collection by the Contractor in accordance with clause D5.h.
- j. Where Order Discrepancies are reported to the Contractor the Contractor shall resolve the Discrepancies to the customer's satisfaction within two (2) Business Days unless an alternative timescale is approved by the Authority's Representatives.

D6. Self to Self Delivery

- a. Where it is confirmed by the Authority and/or the managing Agent that any Contractor Deliverable are to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

D7. Business Continuity

- a. The Contractor shall develop and maintain a Business Continuity and Disaster Recovery Plan in accordance with serial 068 of Schedule 4 (Statement of Requirement (StOR)), to minimise the effects of disruption to the delivery of this Contract due to events including but not limited to industrial disputes, disaster recovery, or extreme weather events. The draft Business Continuity and Disaster Recovery Plan is to be finalised and in accordance with condition B2 (Transition).
- b. The Contractor shall also provide and maintain Business Continuity and Disaster Recovery Plans in accordance with serial 068 of Schedule 4 (Statement of Requirement (StOR)) against each Temporary Overseas Location Agreement.

D8. Acceptance

- a. Acceptance of the Contractor Deliverables shall occur when:
 - (1) the time limit in which to reject the Contractor Deliverables defined in clause D9.b has elapsed.
- b. The Authority shall not have accepted a Contractor Deliverable:
 - (1) merely because the Authority and/or the managing Agent asks for, or agrees to, its

repair or replacement by, or under an arrangement with the Contractor; or

(2) unless otherwise specified in the Contract, merely because the Contractor Deliverables have been Delivered to a third party.

c. Unless otherwise specified in the Contract, the Authority shall not be deemed to have accepted the Contractor Deliverables unless the Authority has had a reasonable opportunity to examine it after Delivery for the purpose:

(1) of ascertaining whether it is in conformity with the Contract; or

(2) in the case of a contract for sale by sample, of comparing the bulk with the sample.

d. Acceptance shall be governed by this condition D8 to the exclusion of any common law or Statutory provision relating to acceptance of goods.

D9. Rejection

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other Conditions of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part) and the Contractor shall:

(1) where reasonably practicable at its own expense and within two (2) Business Days, or as otherwise agreed by the Authority and/or the Managing Agent of being notified of the rejection, remove any product Delivered to the Authority which the Authority has rejected, subject to any restriction of access to the Consignee which may be taken into consideration, or;

(2) where is not reasonably practicable, or the Contractor fails to remove the rejected Product(s), within two (2) Business Days or as otherwise agreed, the Authority shall dispose of the Product(s) at the Contractor's risk and expense.

b. Rejection of any of the Contractor Deliverables under clause D9.a shall take place within a reasonable period but no later than twenty (20) Business Days.

c. The Authority may reject the whole or part of any Order, whether or not fully inspected, if samples, whether of a Product or of the material in the Product, taken randomly from that consignment do not conform to the Order.

d. If, in the opinion of the Consignee, food delivered may be injurious or harmful to health and/or in breach of current food safety legislation, the Authorised Account, or the Authority's Representative (Quality manager) will notify the Contractor by submission of a MOD Form Catering 952 (FCat952). On receipt of the FCat952, the Contractor shall instigate a formal investigation and provide a written response to the satisfaction of the Authority's Representative (Quality Manager). Food safety incidents where investigations indicate fault by the Contractor, or his Subcontractors will be recorded as a Performance Indicator (PI) failure of the related PI in Schedule 5 (Key Performance Indicators (KPIs)). The PI failure will be recorded for the Month in which the investigation is concluded.

e. The Contractor shall at his own expense and within the contractual period for Delivery, or within such further reasonable period as the Authority's Representatives and/or Authorised Account may allow, supply Contractor Deliverables that conform with the requirements of the Contract. Upon rejection, the Contractor shall supply replacement and acceptable Contractor Deliverables at their own expense within the contractual period for Delivery, or within such a time as agreed by the Authority's Representatives and/or Authorised Account.

f. The Contractor shall have a system that tracks rejections, Discrepancies and remedies, and shall report these to the Authority's Representatives in accordance with Condition H1 (Management Information). Discrepancies and rejections, together with remedies provided, will contribute to the attainment of KPIs in accordance with condition H2 (Key Performance Indicators) and Schedule 5 (Key Performance Indicators (KPIs)).

E Payment And Receipts

E1. Invoicing

- a. Invoices shall be submitted by the Contractor to the Authority's Representatives on a Monthly basis as a consolidated invoice for the previous Month.
- b. Invoices submitted to the Authority's Representatives by the Contractor shall be accompanied by an invoice breakdown and shall include a split of the management fee and applicable TUPE costs. The invoice breakdown shall be further split by Food Products, Non-Food Products, Logistics and Organisation costs for each location, exercise and/or operation.
- c. The invoice breakdown shall contain the following information as a minimum:
 - (1) Billed to name and address
 - (2) Contractor's name and remit-to address
 - (3) Unique invoice number
 - (4) Invoice date
 - (5) This Contract number
 - (6) UIN of the Authorised Account
 - (7) Purchase Order number for each Order
 - (8) Name per line item for each Order
 - (9) Unit pricing
 - (10) Quantity Ordered per line item
 - (11) Total amount billed for the specific invoice
 - (12) VAT
 - (13) Due date for payment
- d. Unless otherwise specified by the Authority's Representatives, invoices and invoice breakdowns will be submitted electronically to the Authority's Representative (Commercial).
- e. Invoices may only be submitted after Delivery / performance by the Contractor. The Contractor must provide prior to, or attach to the invoice, proof of delivery to substantiate the validity of an Order. The Authority's Representatives will verify the invoice, invoice breakdown and proof of deliveries prior to processing the Contractor's invoice.
- f. The Contractor shall maintain accurate records in accordance with condition A29 (Contractor's Records) regarding all invoicing activity associated with this Contract, including invoice number, amount billed, and total amount billed against this Contract. The Authority and/or the Managing Agent may require invoice summary information from the Contractor during the life of this Contract.

E2. Payment

- a. Payment terms are net thirty (30) days after acceptance of the Delivered Contractor Deliverables, or performance of the services and receipt of an invoice in accordance with condition E1 (Invoicing), whichever is later. The Authority and/or the Managing Agent may make any adjustments to the Contractor's invoices due to shortages, late Delivery, rejections, or other failures to comply with the requirements of this Contract before payment. Cash discounts will be taken from date of acceptance of Delivered Contractor Deliverables, or date of an invoice in accordance with condition E1 (Invoicing), whichever is later. The Authority and/or the managing Agent may offset any payment due hereunder against any amount owed to the Authority by the Contractor under this Contract or otherwise.
- b. Except where Contractor agrees to accept credit card payment from the Authority and/or the Managing Agent, the Authority and/or the Managing Agent shall make payment of all amounts due in accordance with this condition E2 by means of the Bankers Automated

Clearing Service (BACS). With regard to BACS funds transfer, a payment from the Authority and or the managing Agent to the Contractor shall be considered timely with respect to any payment due date contained herein if the BACS funds transfer is completed no later than four (4) Business Days after such payment due date. The Authority shall not be in breach of these Conditions, or suffer any loss of discount or other penalty, with respect to a BACS funds transfer that was initiated properly and timely by the Authority to the extent its completion is delayed because of failure or delay by the BACS funds transfer system, the operation of a BACS funds transfer system rule which could not be anticipated by the Authority and/or the Managing Agent, or rejection by the Contractor's bank.

c. All Schedule 2 (Schedule of Requirements (SOR)) items will be paid in Great British Pounds Sterling (GBP £). The Authority will consider payment in local currency where Value for Money can be demonstrated by the Contractor.

d. The exchange rate used for any foreign currency will be the MOD General Accounting Rate (GAR).

e. The Authority and/or the Managing Agent reserves the right to conduct periodic audits on consolidated claims for payment in respect of Deliveries and, if any anomalies are identified, will require the Contractor to submit a corrected claim.

E3. Value Added Tax

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of any Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).

c. The Contractor is responsible for the determination of VAT liability. In cases of doubt, the Contractor shall consult HMRC and not the Authority's Representative. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under this Contract, when the liability is other than at the standard rate of VAT, and any changes to it.

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

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

f. The Contractor is to ensure that VAT is not charged to the Authority where food is deemed to be exported.

E4. Tax Compliance

Definitions

a. In this condition E4, unless the context otherwise requires, the following words and expressions have the following meanings:

(1) "DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

(a) tell HM Revenue & Customs of any specified notifiable arrangements or

proposals; and

- (b) provide prescribed information on those arrangements or proposals within set time limits as:
 - i. contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as
 - ii. extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

(2) "General Anti-Abuse Rule" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

(3) "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

(4) "Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

(5) "Occasion Of Tax Non-Compliance (OOTNC)" means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date this Contract came into effect or to a civil penalty for fraud or evasion.

Warranty

b. The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the Contractor to notify OOTNC

c. If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:

- (1) notify the Authority in writing of such fact within twenty (20) Business Days of its occurrence; and
- (2) promptly provide to the Authority:
 - (a) details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the OOTNC as the Authority may reasonably require.

d. For the avoidance of doubt, the obligation at clause E4.c also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.

e. The duty to notify does not substitute the Contractor's obligations under condition H6 (Financial Reports) when used.

Remedies

f. Notwithstanding the Authority's rights under this Contract, the Authority shall be entitled to terminate this Contract under this condition E4 in the event that:

- (1) the warranty given by the Contractor pursuant to clause b is materially untrue; or
- (2) the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by clause E4.c; or
- (3) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

g. In the event that the Authority terminates this Contract under clause E4.f, the Authority shall be entitled to recover from the Contractor:

- (1) the amount of any loss resulting from the termination; and
- (2) any other loss sustained in consequence of any breach of this condition E4, where this Contract has not been terminated.

Duties of the Authority

h. In exercising its rights or remedies under this condition E4, the Authority shall:

- (1) act in a reasonable and proportionate manner taking into account, among other things:
 - (a) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - (b) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC.
- (2) Without prejudice to clause E4.g, seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with this condition E4.

i. The Authority shall not in any case be liable to pay under the provisions of this condition E4 any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total price of the Contractor Deliverables payable under this Contract.

E5. Debt Factoring

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A13 (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 this Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition E5 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause E2.a of condition E2 (Payment);
- (2) all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both clause E5.b and sub-clause E5.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 E5.a, the Contractor shall notify the Authority's Representative (Commercial) 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 sub-clauses E5.a.(1) and E5.a.(2); and

(2) notifies the Authority's Representative (Commercial) of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses E5.a.(1) and E5.a.(2).

d. The provisions of condition E2 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

F Expiry and Termination

F1. Termination for Fraud, Insolvency or Corrupt Gifts

a. The Authority may terminate this Contract with immediate effect, without compensation, by giving written Notice to the Contractor at any time after any of the following events:

Fraud:

b. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees) commits an act of fraud or fraudulent misrepresentation.

Insolvency:

c. where the Contractor is an individual:

(1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the "IA 86") or the court making an interim order pursuant to Section 253 of the IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the "DAAS Act") is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;

(4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

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

- (a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty one (21) Business Days of service of the statutory demand on it;
 - (b) execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;
 - (c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or
 - (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985;
- (7) or any analogous procedure or step is taken in any jurisdiction;
- d. where the Contractor is a firm:
- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under schedule A1 of IA 86 in respect of the Contractor;
 - (2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;
 - (3) any event listed in clause F1.b occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor; or
 - (4) any event listed in clause F1.d occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;
 - (5) an event listed in clause F1.f in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;
 - (6) any event listed in this clause F1.c occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;
 - (7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
 - (8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
 - (9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;
 - (10) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:
 - (a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
 - (b) it is unable to pay its debts in terms of section 221 of IA 86;
 - (11) or any analogous procedure or step is taken in any jurisdiction;

e. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:

- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under schedule A1 of IA 86;
- (2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;
- (3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
- (4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
- (5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;
- (6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or
- (7) any analogous procedure or step is taken in any jurisdiction;

f. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

g. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

Corrupt Gifts:

h. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees):

- (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
- (2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;

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

i. In exercising its rights or remedies to terminate this Contract under this condition F1. the Authority shall:

- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
- (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

j. Where this Contract has been terminated under this condition F1, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

F2. Termination for Convenience

a. The Authority shall have the right at any time to terminate this Contract in whole or in part by giving the Contractor written Notice to expire at the end of two (2) Months.

b. In the event that the Authority exercises its rights in accordance with clause F2.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with this Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contractor the relevant part thereof.

c. The Authority's total liability under clause F2.b shall be limited to the total price of the Contractor Deliverables payable under this Contract the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

d. The Contractor shall include in any sub-contract over [REDACTED] which it may enter into for the purpose of the Contract, the right to terminate the sub-contract under the terms of this condition F2 except that:

- (1) the name of the Contractor shall be substituted for the Authority except in clause F2.b-c;
- (2) the notice period for termination shall be as specified in the sub-contract, or if no period is specified two (2) months; and
- (3) the Contractor's right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of Condition F2.

F3. Authority's Remedies for Breach of Contract

a. If the Contractor:

- (1) fails to Deliver the Contractor Deliverables (or any part thereof) by the Delivery Date in accordance with clause D5.b; of Condition D5 (Delivery / Collection)
- (2) fails to ensure that the Contractor Deliverables (or any part thereof) are available for Collection by the Delivery Date in accordance with clause D5.c of Condition D5 (Delivery / Collection) ;

(3) subject to clause F3.b, fails to supply Contractor Deliverables that comply with the Specification and/or Schedule 4 (Statement of Requirements (StOR));

(4) fails to address the Authority's and/or the Managing Agent concerns to the Authority's satisfaction in accordance with Condition A15 (Change of Control of Contractor), or fails to supply or withholds the Information, required under clause A15.a of Condition A15 (Change of Control of Contractor), or clause B13.c and/or B13.d of Condition B13 (Supply of Hazardous Material or Substance in Contractor Deliverables);

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

(a) a single Key Performance Indicator (KPI) on 3 or more occasions in a rolling three (3) Month period; or

(b) two (2) or more KPIs on a rolling one (1) Month period,

(6) otherwise commits a material breach of its obligations under the Contract,

the Authority shall have the right to exercise one or more of the following remedies:

(7) where the Contractor commits a persistent failure in accordance with sub-clause F3.a.(5) or where the breach is material, in accordance with sub-clause F3.a.(6), to terminate the Contract the relevant part thereof with immediate effect by giving written Notice to the Contractor;

(8) reject those Contractor Deliverables that it has not accepted in accordance with Condition D8 (Acceptance) and return them to the Contractor in accordance with Condition D9 (Rejection) and the Contractor shall refund to the Authority any sums paid in respect of the rejected Contractor Deliverables;

(9) give the Contractor the opportunity at the Contractor's expense to remedy any defect in the Contractor Deliverables, to supply replacement Contractor Deliverables or otherwise to rectify the failure or breach within the Authority and/or the managing Agent - specified time limits;

(10) to claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

(a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or

(b) obtaining the Contractor Deliverables in substitution from another supplier.

b. The Contractor shall not be liable for the Contractor Deliverables' failure to comply with the Specification to the extent that any such non-compliance is attributable to one or more of the following circumstances:

(1) failure by the Authority to install, operate, maintain or store Contractor Deliverables in accordance with any documentation provided by the Contractor;

(2) fair wear and tear, misuse, neglect, accident or negligence, repair or modification by the Authority;

(3) damage caused by the Authority during transportation of the Contractor Deliverables in accordance with clause D5.g of Condition D5 (Delivery / Collection)

c. This Condition F3 shall apply to any repaired or replacement Contractor Deliverables supplied by the Contractor in accordance with sub-clause F3.a.(9).

d. In the event that the Authority terminates this Contract in whole or in part pursuant to this sub-clause F3.a.(7) or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

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

F4. Consequences of Termination

- a. 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.
- b. On the termination of the Contract, whether by Notice, passage of time or otherwise, the Contractor shall co-operate with the Authority and/or the Managing Agent to such extent as the Authority and/or the Managing Agent may reasonably require to ensure an orderly and efficient exit transition in accordance with the Exit Management Plan.
- c. The Contractor shall notify the Authority's Representative (Commercial) within fourteen (14) Business Days of the Notice of termination of all stock in its supply chain held in support of the Contract. This information shall be broken down as follows:
- (1) Product Description
 - (2) Quantities held
 - (3) Unit cost of Product
 - (4) Location of the Stock
 - (5) Shelf life remaining (where applicable); and
- d. The Contractor shall grant the Authority the irrevocable right to purchase some or all of the stock held in support of this Contract at the Contract Price in operation at the time the Notice of termination is issued. The quantities and mix of stock to be purchased by the Authority will be decided by the Authority and/or the Managing Agent and will be notified by the Authority's Representative (Commercial). The Authority's rights under this clause F4.d. shall cease six (6) weeks after the date the Contractor notifies the Authority under clause F4.c.
- e. The Parties shall have the responsibilities in respect of staff transfer set out in Annex Q to Schedule 3 (Transfer Regulations: Staff Transfer Arrangements on Exit) and the associated Appendices.

F5. 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.

F6. Authority Step-in

- a. If either the Contractor declares itself incapable of fulfilling this Contract in full for any reason, or the Contractor is otherwise unable to:
- (1) Fulfil this Contract either in full or in part; and/or
 - (2) Discharge its statutory duty.
- b. and it is believed that satisfactory fulfilment of this Contract can be restored during the remaining Term, then the Authority shall be entitled to take action in accordance with this Condition F6 and Condition F7 (Authority Step-out).
- c. If clause F6.a. applies and the Authority wishes to take action, the Authority's Representative (Commercial) shall notify the Contractor's Representative of the following:
- (1) The action it wishes to take;
 - (2) The Contractor's assets the Authority proposes to utilise;
 - (3) The reason for such action;
 - (4) The date it wishes to commence such action; and

- (5) The time period, if it can be reasonably assessed, for which it believes such action shall be necessary.
- d. Following such notification the Authority shall take such action as notified under clause F6.c. and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority and/or the managing Agent while it is taking the Required Action.
- e. At the earliest opportunity, the Parties shall in good faith seek to reach appropriate agreements regarding liability and charges for Contractor assets under control of the Authority as a result of the Required Action.
- f. For so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing all or any part of the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of Contractor Deliverables.
- g. The Authority shall not be liable for any payment in respect of the Contractor Deliverables not provided as a consequence of the Required Action.
- h. The obligations under this Contract shall continue to apply to all parts of Contractor Deliverables not affected by this Condition F6.
- i. In respect of the period in which the Authority is taking the Required Action; the Authority shall be reimbursed by the Contractor for the costs incurred to undertake the Required Action

F7. Authority Step-out

- a. In the event that Condition F6 (Authority Step-in) has been invoked then the Authority's Representative (Commercial) may at any time during the period of the Required Action notify the Contractor's Representative that the Authority wishes to cease the Required Action and the date on which it intends to cease the Required Action
- b. On receipt of the Authority's Representative (Commercial) notification pursuant to clause F8.a. the Parties shall consult with each other as to the method by which the Authority shall cease the Required Action.
- c. On the date on which the Required Action ceases:
- (1) The Authority will be released from all of its obligations and liabilities in relation to the Required Action other than its obligations to pay the Contractor pursuant to Condition F6 (Authority Step-in) and;
- (2) The Contractor shall resume responsibility for all or any part of Contractor Deliverables subject to the Required Action.
- d. Unless otherwise agreed, the obligations of this Contract shall revert to those applicable prior to the commencement of Required Action.

F8. Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, as per the process set out at clauses H3.a.(1) and H3.a.(2)..The Parties 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 F8.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause F8.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.

d. Should a dispute arise, either Party shall inform the Authority's Representative (Commercial), or the Contractor's equivalent in writing. This shall outline the nature of the dispute and the matter in dispute. Both Parties shall provide reasonable and appropriate supporting data to each other as requested.

F9. Exit Management Plan

a. The Contractor shall finalise the Exit Management Plan detailed in Schedule 7 (Contractor Deliverable Plans) in accordance with Condition B2 (Transition).

b. The Exit Management Plan sets out the procedure that the Parties shall follow upon expiry, or earlier termination of this Contract. The plan shall provide comprehensive plans for the activities and the associated liaison and assistance required for the successful transfer of the Contractor Deliverables, if required, upon expiry or the earlier termination of this Contract. The plan shall include, but not limited to:

- (1) The actions required to fulfil the requirements above and the time-lines associated with such actions;
- (2) The reporting schedule on implementing the plan;
- (3) An indication of any areas where the Authority, the Managing Agent and the Contractor will need to work together to enhance the sustainable delivery of the Contract;
- (4) A schedule for joint audit and review of the Key Performance Indicators at Schedule 5 (Key Performance Indicators (KPIs)) by the Authority's Representatives and the Contractor; and
- (5) A flow-down of the plan and actions to Subcontractors where appropriate.

c. The Exit Management Plan shall identify the information that will be required to ensure a smooth and efficient transfer of responsibilities upon completion of the Contract.

d. Upon the expiry of this Contract the Contractor agrees to co-operate with the Authority and/or the Managing Agent to such extent as he may be reasonably required to do so for a period of up to six (6) Months from the date of expiry, such period to be determined by the Authority and/or the Managing Agent, to ensure an orderly and efficient transition from the management by the Contractor to management by the Authority, The Managing Agent or some other person.

G Facilities and Assets

G1. Access to Contractor' Premises

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

b. The Contractor shall keep full and accurate records (including, without limitation, financial documents, Contractor quotations and tenders evidencing expenditure and income) with respect to this Contract.

c. The Contractor shall grant the Authority's Representative(s) or agent(s) reasonable access, within normal office hours, to the Contractor systems and records relating to this Contract from the Effective Date of Contract. The Contractor shall continue to grant access to the records for as long as they are retained after termination of this Contract as required by Condition A29 (Contractor's Records). The Contractor shall, on request, provide the Authority's Representatives (Commercial) with copies from the records relating to this Contract in a format and medium determined by the Authority's Representatives (Commercial). The Contractor shall provide, at no additional cost to the Authority, such office accommodation and facilities for representatives of the Authority as the Authority may reasonably require. As far as is reasonably practical, the Contractor shall ensure that these provisions are made in sub-contract(s). Access to such Subcontractors shall be arranged by the Authority and/or the managing Agent through the Contractor.

- d. The Contractor shall provide assistance and advice regarding the interpretation of the records and data obtained under clause G1.c
- e. In the event that the Authority and/or the Managing Agent identifies any anomalies or errors in the records held by the Contractor, the Contractor shall amend and correct the records to the satisfaction of the Authority and/or the Authority's Representatives within a reasonable period of time.
- f. The Contractors', its Subcontractors' and, where appropriate, their agents' premises that are specifically related to this contract shall at all reasonable times be open to audit, or inspection by the Authority and/or the Authority's Representatives in accordance with Condition G4 (Auditing).
- g. Subject to the provision of Condition A25 (Disclosure of Information) the Authority and its agent(s) shall respect the confidentiality of the Contractor and of its Subcontractors and suppliers in respect of all data and records accessed under this Condition G1.
- h. The Authority shall give a minimum of five (5) Business Days' notice of the exercise of its rights under this Condition G1, except:
- (1) Where circumstances dictate a more urgent timescale (e.g. Ministerial / Parliamentary requirements); or
 - (2) Where fraud or other impropriety by the Contractor, the Authority and/or any third party in relation to this Contract is suspected, in which case the Authority will be entitled to conduct an audit without notice; or
 - (3) There shall be a standing right for the Authority or its agent(s) to carry out an unannounced Quality Management System (QMS), or food safety check in accordance with AQAP 2120 if it perceives an immediate threat to food safety, legality or quality.

G2. Contractor's Personnel at Government Establishments

General

- a. The following general provisions apply:
- (1) The Officer in Charge shall provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of this Contract as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge.
 - (2) Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge, unless otherwise stated in the Contract, and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Contract. Any utilities required by the Contractor shall be subject to the charges set out in the Contract.
 - (3) The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the Contract.

Liability In Respect Of Damage To Government Property

- b. Without prejudice to the provisions of Conditions G5 (Issued Property) and of G6 (Loss to the Articles), the Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the Contractor, or by any of his Representatives, arising from his or their presence on a Government Establishment in connection with the Contract, provided that this Condition G2 shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within his or their reasonable control.

c. The total liability of the Contractor under clause G2.b. herein shall be subject to any limitation specified in the Contract.

Contractor's Property

d. All property of the Contractor and his Representatives shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

- (1) where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- (2) where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

Contractor's Representatives

e. The Contractor shall submit in writing to the Authority and/or the Authority's Representative (Commercial) for approval, initially and as necessary from time to time, a list of those of his Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the Authority and or the managing Agent may require, including full details of birthplace and parentage of any such Representative who:

- (1) was not born in the United Kingdom; or
- (2) if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

f. The Authority shall issue passes for those Representatives who are approved by it in accordance with clause G2.e. herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

g. Notwithstanding the provisions of clauses G2.e. and G2.f. hereof if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

h. The decision of the Authority upon any matter arising under clauses G2.e. to g. inclusive shall be final and conclusive.

Observance Of Regulations

i. The following provisions apply:

- (1) The Contractor shall ensure that his Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.
- (2) Where the Contractor requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for his Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall apply in the first instance to the Authority's Representative (Project Manager).
- (3) On request, the Contractor shall be able to demonstrate to the Authority and/or the Managing Agent that the Contractor's processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority and/or the Authority's Representatives to inspect the processes being applied by the Contractor to comply with the Standard.

(4) The Contractor shall comply and shall ensure that his Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the Authority and/or the Managing Agent on request.

(5) When on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge.

Transport Overseas

j. Where the Contractor's Representatives are required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Authority's Representative (Project Manager). When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes his Representatives to accompany material for installation which he is to arrange to be delivered, the Contractor shall make his own transport arrangements. Transport of the Contractor's Representatives locally overseas which is necessary for the purposes of this Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

Medical Treatment Overseas

k. Out-patient medical treatment given to the Contractor's Representatives by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Establishment, and transportation of the Contractor's Representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

Injuries, Disease And Dangerous Occurrences

l. The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

Dependants Of Contractor's Representatives

m. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's Representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current MOD rates. These will be considered on a case by case basis.

Provision Of Funds Overseas

n. The Contractor shall, wherever possible, arrange for funds to be provided to his Representatives overseas through normal banking channels (e.g. internet banking, credit card or by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Establishment to which the Contractor's Representatives are attached. All such advances made by the Authority shall be recovered from the Contractor.

Health And Safety Hazard Control

o. Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:

- (1) The Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract of:
 - (a) any health and safety hazards associated with the work to be performed by him or any of his Representatives;
 - (b) any foreseeable risks to the health and safety of all persons associated with such hazards; and
 - (c) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.
- (2) The Authority shall notify the Contractor of:
 - (a) any health and safety hazards which may be encountered by the Contractor or any of his Representatives on the Government Establishment;
 - (b) any foreseeable risks to the health and safety of the Contractor or any of his Representatives, associated with such hazards; and
 - (c) any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks.
- (3) The Contractor shall notify his Representatives of and, where appropriate, provide adequate instruction in relation to:
 - (a) the hazards, risks and precautions notified by him to the Authority under sub-clause G2.o.(1);
 - (b) the hazards, risks and precautions notified by the Authority to the Contractor under sub-clause G2.o.(2); and
 - (c) the precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks.
- (4) The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract with:
 - (a) copies of those sections of his own and, where appropriate, his Representatives' Safety Policies which are relevant to the risks notified under sub-clause G2.o.(1);
 - (b) copies of any related risk assessments; and
 - (c) copies of any notifications and instructions issued by him to his Representatives under sub-clause G2.o.(3).
- (5) The Authority shall provide the Contractor with:
 - (a) copies of those sections of its own Safety Policies which are relevant to the risks notified under sub-clause G2.o.(2);
 - (b) copies of any related risk assessments; and
 - (c) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under sub-clause G2.o.(3).

G3. Government Furnished Assets, Equipment, Services and Facilities

- a. The collective term for Government Furnished Assets, Equipment, Services and Facilities under this Contract shall be known as GFX.
- b. For the purposes of performing this Contract the Authority will provide the Contractor with use of the land and premises, and transport of Products to and from the port / airport of arrival in the Falkland Islands to the properties known as the Falkland Islands Warehouses as Government Furnished Facilities (GFF). The provision of this GFF including utilities required for the normal performance of this Contract will be provided by the Authority free of charge. Condition G2 (Contractors Personnel at Government Establishments) and Condition G5 (Issued

Property) shall apply.

c. In the event that the Authority and/or the Managing Agent requires Delivery of Contractor Deliverables to Non-permissive Environments, where a Temporary Overseas Location Agreement is in development in accordance with Condition D4 (Supply of Products and Services to Temporary Overseas Locations), the issuing of GFA shall be considered in respect of that agreement. If the Authority and/or the Managing Agent decides that the issue of GFA is appropriate; then in addition to Condition G5 (Issued Property), G7 (Accounting for the Property of the Authority) and DEFSTAN 05-99 Managing Government Furnished Equipment in Industry, specific terms regarding the issue of GFA by the Authority shall be included in the Temporary Overseas Location Agreement.

d. The Authority is under no obligation to provide GFX and such support shall be provided entirely at the discretion of the Authority.

e. The use of GFX shall not relieve the Contractor of any of its responsibilities for the proper performance of the Contract. It is the Contractor's responsibility to determine that the GFX is fit for the Contractor's purposes in accordance with Condition G5.

G4. Auditing

a. Scheduled audits of the Contractor's and/or Subcontractors Quality Management System (QMS) for the procurement, storage and distribution of Contractor Deliverables shall be completed, annually as a minimum, or at a frequency confirmed by the Authority and or the Authority's Representatives.

b. The date and duration of the scheduled audit shall be mutually agreed by the Authority and/or the Authority's Representatives and the Contractor and/or Subcontractors in accordance with clause G1.h of Condition G1 (Access to Contractor's Premises).

c. The Authority reserves the right to conduct unscheduled audits of the Contractor's and/or Subcontractors QMS where a breach / potential breach of the Contract, or a breach / potential breach of Legislation has been identified.

d. In addition to the rights of access granted under Condition G1 (Access to Contractor's Premises) the Contractor and/or Subcontractors shall provide the Authority and/or the Authority's Representative (Quality Manager) with the following for the purposes of any Audit:

- (1) The right of access to facilities where parts of the contracted activities are being performed.
- (2) Information pertaining to the fulfilment of requirements in the Contract.
- (3) Unrestricted access to evaluate Contractor compliance against this Condition G4 and Condition B3 (Verification and Validation of the Contractors QA Process).
- (4) Unrestricted opportunity to conduct verification of product conformity with this Contract requirements.
- (5) Required assistance for evaluation, verification, validation, testing, inspection or release of the product for the accomplishment of Contract requirements.
- (6) The necessary audit equipment available for reasonable use in performance of this Condition G4.
- (7) The necessary documentation, to confirm product conformance to specification.

e. The Contractor and/or Subcontractor shall be expected to undertake corrective action where it is required to the timescale(s) agreed between the Authority and/or the Authority's Representative (Quality manager) and the Contractor.

f. The Contractor shall notify the Authority and/or the Authority's Representative (Commercial) of any changes to their organisation or processes. When the changes are considered to affect the management of quality, the Authority and/or the Authority's Representative (Quality Manager) shall then arrange to conduct an audit, to ensure that the Contractor's QMS complies with the Conditions of the Contract.

G5. Issued Property

a. All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Contract and for no other purpose, without the prior approval in writing of the Authority.

b. Neither the Contractor, nor any Subcontractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Subcontractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Subcontractors and other persons dealing with any Issued Property.

Receipt

c. Subject to clauses G5.d. and G5.g. below, within fourteen (14) days of receipt of Issued Property, or such other longer period as may be specified in the Contract, the Contractor shall:

- (1) check the Issued Property to verify that it corresponds with the Issued Property specified in the Contract;
- (2) conduct a reasonable visual inspection; and
- (3) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided,

and notify the Authority's Representative (Commercial) of any defects, deficiencies or discrepancies discovered.

d. Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at clause G5.c. above shall count from the date on which packages are opened.

e. The Authority shall within a reasonable time after receipt of any notice under clause G5.c. replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

f. In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with clause G5.c, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

g. Clauses G5.c. – f. do not apply in the following circumstances:

- (1) where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the Contract;
- (2) where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the Contract.

Custody

h. Subject to clause G5.k. below and any limitation or exclusion of liability as may be specified in the Contract, the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Contractor Deliverables, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's and/or the Managing Agent's instructions or until the expiry of the period specified in clause G5.m.

i. The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Contract.

- j. If requested, the Authority and/or the Managing Agent, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.
- k. The Contractor shall not be liable in respect of:
- (1) defects or deficiencies notified to the Authority's Representative (Commercial) in accordance with clause G5.c. or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at clause G5.c;
 - (2) fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract(except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
 - (3) Issued Property rendered unserviceable as a direct result of ordinary performance of the Contract;
 - (4) any loss or damage to Issued Property arising from:
 - (a) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
 - (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - (c) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
 - (d) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

Accounting and Return of Issued Property

- l. The Contractor shall:
- (1) open and maintain a Public Store Account (PSA) in accordance with DEF STAN 05-099;
 - (2) ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time;
 - (3) on being given two (2) Months' notice or such other period as has been stated in this Contract permit, and co-operate with, the Authority and/or the managing Agent to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority; where the Authority and/or the Managing Agent has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue then these audits may be conducted without notice.
- m. At Contract completion the Contractor shall forward a list of Issued Property still held to the Authority's Representative (Commercial). Return or disposal of such Issued Property will be as specified in the Contract, or as instructed by the Authority and/or the managing Agent at Contract completion. If no disposal instructions are specified in this Contract, the Authority and/or the Managing Agent shall provide such instructions within two (2) Months of the Contractor's written request to do so.

G6. Loss To The Articles

- a. Notwithstanding the responsibilities set out in Annex C to Schedule 3 (Responsibilities for Food Supply in the Falkland Islands), until Delivery and / or collection, the risk of Loss to the Contractor Deliverables remains with the Contractor. Without prejudice to any other rights or remedies of the Authority, the Contractor shall make good any such Loss or damage however caused or occasioned which occurs before Delivery and / or collection .
- b. Clause G6.a shall apply notwithstanding:
- (1) that the Contractor Deliverables may have been inspected by the Authority; or

- (2) that the property therein may have passed earlier than upon Delivery and / or collection.
- c. Unless otherwise agreed and save for the provisions of clause G6.d, the Contractor shall not after Delivery and / or collection be at risk in respect of the Contractor Deliverables except where the Authority rejects any Contractor Deliverables under Condition D9 (Rejection), in which case the risk in the rejected Contractor Deliverable shall revert to the Contractor on the earlier of:
 - (1) the removal of the Contractor Deliverable by the Contractor in accordance with Condition D9 (Rejection); or
 - (2) the close of business on the last day of the period in which the Contractor is required to remove the rejected Contractor Deliverables in accordance with Condition D9 (Rejection); or
 - (3) the return of the Contractor Deliverables by the Authority in accordance with Condition D9 (Rejection).
- d. Notwithstanding the provisions of clause G6.c, if the Contractor has given notice of objection under clause D9.f of Condition D9 (Rejection) the Contractor shall not be at risk in respect of the rejected Contractor Deliverables where a dispute between the parties relating to the rejection remains unresolved and the Contractor Deliverables remains in the possession of the Authority.
- e. This Condition G6 shall not apply to any Issued Property supplied to the Contractor by or on behalf of the Authority in connection with which the Contractor is required to carry out any Service. Such Issued Property shall be subject to Condition G5 (Issued Property).

G7. Accounting For Property Of The Authority

- a. The Contractor shall:
 - (1) maintain a Public Store Account (PSA), as defined in DEFSTAN 05-099, which shall include a complete list of all property of the Authority, as defined in clause G7.b, and record for that property all transactions or other accounting information specified at Annex R to Schedule 3 (Accounting for Property of the Authority – Data & Format Requirements for PSA Records);
 - (2) supply to the Authority's Representatives quarterly reports on the current PSA holdings. At least one (1) report in any twelve (12) Month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority's Representatives of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under the Contract;
 - (3) ensure that the PSA is available for inspection by the Authority and/or the Managing Agent at any reasonable time;
 - (4) on being given two (2) Months' notice or any other period as has been stated in this Contract permit, and co-operate with, the Authority and/or the managing Agent to conduct audits of the PSA in a manner to be determined by the Authority and/or the Managing Agent; where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority and/or the Managing Agent is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
 - (5) retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority, or for any other period as may be specified in the Contract;
 - (6) if the Authority and/or the managing Agent agrees that a Subcontractor at whatever level of subcontracting shall have responsibility in the Subcontractor's PSA for property of the Authority issued in aid of the Contract, the Contractor shall include in any sub-contract with those Subcontractors only the provisions corresponding to those set

out in this Condition G7 that apply to property of the Authority issued in aid of the subcontract, in particular clauses G7.a, G7.b, G7.d and G7.g; and

(7) manage the Government Furnished Assets (GFA) component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to Condition A9 (Variations to Specifications) within three (3) Months of the publication date of the new edition. These amendments shall not have retrospective effect.

b. For the purposes of this Condition G7 'property of the Authority' means GFA and fixed assets, including property issued under Condition G5 (Issued Property) and property of the Authority issued to the Contractor under any other authorising document except for property vested in the Authority under clause G8.a of Condition G8 (Vesting).

c. For the avoidance of doubt, this Condition G7 shall apply to all property issued to the Contractor from the date of this Contract, whether in aid of the Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the date of this Contract may be subject to separate contractual arrangements.

d. The obligations of the Contractor arising under this Condition G7 in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of sub-clause G7.a.(5).

e. The obligations of the Contractor arising under this Condition G7 in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of sub-clause G7.a.(5). unless and until a subsequent contract containing Condition G7 is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.

f. If, after completion of the Contract, no subsequent contract is placed containing Condition G7 within the period detailed at sub-clause G7.a.(5), then the obligations of the Contractor arising under this Condition G7 in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed at sub-clause G7.a.(5).

g. The Authority reserves the right to amend Annex R to Schedule 3 to this Condition without further consultation where the amendments arise from the Department's proper and reasonable accounting requirements. For the purposes of this Condition G7, Annex R to Schedule 3 shall be regarded as a Specification and subject to the provisions of Condition A9 (Variations to Specification). If the Authority exercises this right:

(1) the Contractor shall implement the amendment to Annex R to Schedule 3 at the commencement of the Department's next accounting year provided that a notice of six (6) Months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and

(2) the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) Months of notice having been given, if the Contractor cannot comply with the amendment to Annex R to Schedule 3.

G8. Vesting

a. Subject to the following provisions of this Condition G8:

(1) each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

(2) all material which the Contractor acquires or allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the material is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the

Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

b. Neither the Contractor, nor a Subcontractor, nor any other person shall have a lien on any Article or material which have vested in the Authority under clause G8.a of this Condition G8 for any sum due to the Contractor, Subcontractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Condition G8 are brought to the notice of all Subcontractors and other persons dealing with any such Articles or material.

c. Without prejudice to clause G8.a, the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any material is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority and/or the Managing Agent in this respect.

d. Any Contractor Deliverables or material which is rejected by the Authority shall immediately re-vest in the Contractor.

e. If the Authority terminates this Contract otherwise than under Condition F2 (Termination for Convenience), any Article which has not been accepted in accordance with Condition D8 (Acceptance) and any material which has not been incorporated in any Article which has been accepted in accordance with Condition D8 (Acceptance) shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of thirty (30) days from the date on which that termination shall take effect, unless the Authority's Representative (Commercial) has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or material.

f. Any payment made by the Authority in respect of any Contractor Deliverables or material which re-vest in the Contractor under clauses G8.d or G8.e shall be recoverable from the Contractor.

g. The Contractor shall hand over to the Authority any Contractor Deliverables or material in which the Authority has elected to retain the property under clause G8.e. If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Contractor Deliverables or material and recover the cost of doing so from the Contractor.

h. The Authority shall pay a fair and reasonable price for any Contractor Deliverables or material in which it has elected to retain the property under clause G8.e and which are handed over to it by the Contractor or otherwise come into its possession.

i. Where any Contractor Deliverables or material in the Authority's possession or control has re-vested in the Contractor in accordance with clauses G8.d or G8.e, the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the Contractor Deliverables or material is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the Contractor shall remove them within fourteen (14) days of their re-vesting.

H Performance and Contract Administration

H1. Management Information

General

a. The Contractor shall provide Management Information (MI) reports in accordance with this Condition H1 to the Authority's Representatives on a Monthly basis for the preceding Month by the tenth (10th) Business Day of each Month in the format specified by the Authority's Representatives.

b. The Contractor shall report to the Authority's Representatives, produce records and provide the Authority's Representatives with the MI as agreed between the Parties, in accordance with Conditions H1(f) and H6 (Financial Reports) of this contract and in doing so shall:

- (1) consistently, openly, willingly and proactively share with the Authority and/or the Managing Agent the information that the Contractor collects and uses internally to deliver and manage its delivery of the Contractor Deliverables;
 - (2) ensure that the Authority and/or the Managing Agent is not reliant on the accuracy of its own enquiries to elicit information that may be relevant to the effective operation of this Contract.
 - (3) ensure the MI is capable of being captured, extracted and managed by the Authority and/or the Managing Agent;
 - (4) conduct efficient and timely root cause analyses at the request of the Authority and/or the Managing Agent and, where relevant, assist the Authority and/or the managing Agent in performing any root cause analyses;
 - (5) ensure that all Information provided or made available by it or any of its Subcontractors to the Authority's Representatives is the same as the corresponding Information that the Contractor or any of its Subcontractors uses for its own internal management and reporting;
 - (6) maintain the capability to provide financial modelling, financial analysis, performance analysis and any other activities relating to the production and analysis of the MI; and
 - (7) promptly rectify errors identified in the MI and reimburse the Authority for any excess sums paid by the Authority, or any associated costs or expenses incurred by the Authority as a result of such errors, including costs of any subsequent audit or independent review required as a result of such errors.
- c. The Contractor shall, if requested by the Authority and/or the Managing Agent:
- (1) provide full details of the costs and expenses incurred or to be incurred by any of its Subcontractors in the provision of the Contractor Deliverables;
 - (2) procure that the Subcontractors provide the MI on the same basis as required of the Contractor; and
 - (3) for all Subcontractors, be responsible for demonstrating to the Authority and/or the Managing Agent how Value for Money is achieved in the procurement of the relevant Contractor Deliverables.
- d. The Contractor shall supply, maintain and update Contractor Deliverable Plans in accordance with Conditions B16 (Contractor Deliverable Plans), D4 (Supply of Products and Services to Temporary Overseas Locations) and D7 (Business Continuity).
- e. The Contractor shall ensure that all MI:
- (1) is relevant and presented at an appropriately meaningful level of detail to inform and enable the decision-making process;
 - (2) if requested by the Authority and/or the managing Agent, includes clear narrative explanations which:
 - (a) describe:
 - i. the specific information captured by the Contractor;
 - ii. where it comes from;
 - iii. what it means;
 - iv. how it is used; and
 - v. the interfaces, tools and system capabilities used by the Contractor to provide it; and
 - (b) directs the recipient's attention to significant and/or relevant matters, including the Contractor's key management insights and any issues requiring management attention from the Contractor or which would require a management

intervention by the Contractor.

Maintaining MI

- f. The Contractor shall ensure that the MI is comprehensive, complete, up-to-date and accurate when sent to the Authority's Representatives on the date specified in clause H1.a.
- g. The MI shall be produced, stored and maintained:
- (1) within organised systems, in a form which maintains their integrity, context and authenticity and which enables the efficient audit and inspection of the MI by the Authority and/or the Managing Agent. The Contractor shall clearly identify all products which have been Ordered, the dates of the Order and the volumes Ordered in an easy to understand format, using clear descriptions and consistent measurements i.e. Kilograms (Kg).
 - (2) using a method of storage which allows easy access and duplication by the Authority and/or the Managing Agent in accordance with this Contract;
 - (3) in such a manner that the Authority and/or the Managing Agent and/or a replacement contractor could, if required, commence the provision of the replacement Contractor Deliverables without undue expenditure; and
 - (4) so as to enable segregation of the MI from any other records of the Contractor and the transfer of the MI to the Authority, the Managing Agent and/or a replacement Contractor efficiently and without undue expense or delay on expiry or termination in whole or part of this Contract.
- h. The Contractor shall ensure that the MI is at all times maintained in accordance with Condition A28 (Official-Sensitive Security Requirements) and A25 (Disclosure of Information).
- i. Upon the expiry or termination of this Contract the Contractor shall provide the Authority, the Managing Agent and/or a replacement contractor, in the manner as the Authority and/or the Managing Agent shall reasonably specify, all MI which were in existence at the date of expiry or termination of this Contract (or, where such MI is required by statute to remain with the Contractor, copies thereof) or such part of the MI as specified by the Authority and/or the Managing Agent. The MI provided shall allow the replacement Contractor to readily identify as a minimum the;
- (1) Contractor Deliverables Ordered under this Contract,
 - (2) volumes and frequency of Orders,
 - (3) information on the provision of Alternatives and Substitutions

Additional MI

- j. The Authority and/or the Managing Agent may require additional information to be provided by the Contractor and its Subcontractors ("Additional MI"). Additional MI may be required for a number of reasons including but not limited to:
- (1) parliamentary questions;
 - (2) Freedom of Information (FOIA) requests; and
 - (3) requests from Government departments (including HM Treasury and the Cabinet Office) or agencies (including the National Audit Office).
- k. Additional MI shall be provided to the Authority's Representatives:
- (1) within the timeframes as notified to the Contractor by the Authority's Representatives. Requests for Additional MI may have imposed timeframes or the need for a timely response and the Contractor shall meet such timeframes;
 - (2) in a format or structure set out by the Authority or imposed by the party requesting the Additional MI; and
 - (3) at no additional cost to the Authority.

l. Where the Contractor considers that it does not have the necessary resources to provide the Additional MI as requested in accordance with this Condition H1, the Contractor shall submit to the Authority's Representatives details of the proposed costs associated with such additional resource for the Authority and/or the Managing Agent in its absolute discretion to approve. Following such approval, where the Contractor incurs such additional costs in providing the Additional MI, they will be included in an invoice to be submitted by the Contractor to the Authority's Representatives only if and to the extent the Contractor is able to show they are reasonably and properly incurred and are payable in connection with the provision of Additional MI in accordance with this Condition H1. Any invoices submitted by Contractor to the Authority's Representatives shall be in accordance with Condition E1 (Invoicing) and shall also comply with the provisions of Condition E2 (Payment) of this Contract and the Authority shall be entitled to exercise such rights afforded to it under the Conditions of this Contract.

m. Additional MI shall be provided to the Authority's Representative who requests the Additional MI.

Authority Review

n. If at any time the Authority and/or the managing Agent considers it necessary, it may carry out a thorough and detailed review of costs and/or the Contractor's provision of the Contractor Deliverables (an "Authority Review"), and the Contractor shall procure that the Authority and/or the managing Agent has a like right in respect of the Subcontractors in which case:

- (1) it may nominate representatives ("Authority Reviewers") to undertake financial, performance and/or management audits in relation to this Contract;
- (2) the Contractor shall provide all reasonable support to the Authority Reviewers in carrying out any inspection, audit or check and allow them;
 - a. access to all Contractor personnel and all MI to the extent allowed under the Data Protection Legislation;
 - b. use of suitable office accommodation where needed, and
 - c. shall procure (where relevant) that its Subcontractors do likewise.

o. The Contractor shall provide such routine or special written or oral reports as the Authority and/or the managing Agent reasonably considers necessary in respect of any part or the whole of the Contractor's or its Subcontractor's activities under this Contract.

Costs

p. If an Authority Review finds that any information provided or made available to the Authority and/or the Managing Agent by or on behalf of the Contractor or a Subcontractor is materially inaccurate, or identifies a breach of Contract by the Contractor:

- (1) the Contractor shall reimburse the Authority for all Direct Losses incurred in connection with the Authority Review within fourteen (14) days of receipt of notice from the Authority's Representatives; and
- (2) any costs incurred by or on behalf of any Subcontractor in connection with the Authority Review and any rectification shall be for the Contractor's own account.

Rectification

q. If it is disclosed that any information provided or made available to the Authority and/or the Managing Agent by or on behalf of the Contractor or a Subcontractor is inaccurate, the Contractor shall:

- (1) identify and notify the Authority's Representative (Commercial) in writing of the reason for the inaccuracy;
- and
- (2) take all necessary steps to rectify that information and, where relevant, the systems and/or processes that gave rise to the inaccuracy.

Audit

r. Nothing in this Condition H1 shall prejudice the Authority's audit rights set out in Condition G4 (Auditing) and the provisions of AQAP 2120.

H2. Key Performance Indicators

a. Performance under this Contract will be measured using a number of Key Performance Indicators (KPIs) and Performance Indicators (PIs) detailed in Schedule 5 (Key Performance Indicators (KPIs)).

b. The Contractor shall provide all information required by the Authority and/or the Managing Agent in accordance with Condition H1 (Management Information) to demonstrate their performance against the KPIs.

c. Upon Service Commencement Date the Authority's Representatives shall review Monthly the Contractor's performance against the Key Performance Indicators (KPIs) as detailed in Schedule 5 (Key Performance Indicators (KPIs)) of the Contract.

d. Contractor performance, including KPI / PI performance shall be reviewed at the Quarterly Review Board detailed in sub-clause H3.a.(2) of Condition H3 (Progress Monitoring, Meetings and Reports).

e. The Level of Performance for each KPI / PI shall be subject to review at each Quarterly Review Board. Level of Performance reviews shall include, but are not limited to, Order pattern history, customer feedback and Contractor performance against the Minimum Acceptable Performance Level %. The Authority and/or the managing Agent shall, at its discretion accept amendments to the Minimum Acceptable Performance Levels proposed by the Contractor. Amendments to the Minimum Acceptable Performance Level for any KPI / PI shall be conducted in accordance with Condition A10 (Amendments to Contract).

f. In the event of KPI failure the Authority shall retain a percentage of profit in accordance with C4 (Retention of Profit).

g. In the event of KPI failure in accordance with sub-clause F3.a.(5) of Condition F3 (Authority's Remedies for Breach of Contract), or a significant failure in any individual KPI the Authority's Representatives may request a Recovery Plan. The Recovery Plan shall identify as a minimum, the cause of the failure, the actions to resolve the failure and the timescales in which the failure will be rectified. Should a Recovery Plan be requested, this shall be provided by the Contractor for consideration by the Authority's Representatives within ten (10) Business Days of the Authority's Representatives request.

h. Failure of KPIs in accordance with sub-clause F3.a.(5) of Condition F3, or failure to adhere to any agreed Recovery Plan may be deemed to be a breach of contract and the remedies detailed in Condition F3 (Authority's Remedies for Breach of Contract), or any other applicable condition in this Contract shall apply. Any disputes regarding the application of this Condition H2 should be dealt with in accordance with Condition F8 (Dispute Resolution).

H3. Progress Monitoring, Meetings and Reports

a. The Contractor shall attend progress meetings at the frequency or times at sub-clauses H3.a.(1) to (3) and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings; all meetings will be conducted in accordance with Schedule 6 (Collaborative Working Principles);

(1) **Ad-Hoc** - The Authority and/or the Managing Agent and the Contractor shall hold meetings as and when required to examine any issues that have arisen with the performance of this Contract and to act as the first point of escalation for resolution of any problems. This shall include progress meetings whereby a schedule of meetings shall be agreed between the Parties.

(2) **Quarterly Review Board** - The Authority and/or the Managing Agent and Contractor shall conduct a quarterly review Board to address pricing, performance and escalation for resolution of problems which cannot be resolved at H3.a.(1) above, in accordance with these Conditions of Contract, attended by the Authority's

Representatives, Contractors Representatives and and supported where necessary by Front Line Command User representatives.

(3) **Annual Strategic Board** - The Authority and/or the Managing Agent and Contractor shall conduct an annual review to address pricing, including reconciliation of price variances in accordance with Condition C2 (Pricing) and performance in accordance with these Conditions of Contract, attended by the Authority's Representatives, Contractors Representatives and supported where necessary by Front Line Command User representatives.

b. Unless stated otherwise the Authority and/or the managing Agent shall be responsible for making a record of the discussions and decisions of the meeting.

H4. Authority's 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 H4.

b. The Authority's Representatives for this Contract are as follows:

- (1) Commercial: [REDACTED]
- (2) Project Manager: [REDACTED]
- (3) Quality Manager: [REDACTED]
- (4) Payment: [REDACTED]

c. The Authority's Representatives detailed in clause H4.b (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by this Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

d. 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 clause H4.b in accordance with Condition A10 (Amendments to Contract).

H5. Notices

a. A Notice served under this 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 following addresses;

(a) Authority:

Email: DESLDCMO-LCST-Commercial@mod.uk,

Fax No: [REDACTED]

Address: LDOC CMO Commercial
Elm 2B #4237
MOD Abbey Wood
Bristol BS34 8JH

United Kingdom

(b) Contractor:

Email: [REDACTED]

Fax: [REDACTED]

Address: Ecolog Deutschland GmbH
In der Steele 14
40599 Düsseldorf
Germany.

- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
- (2) if sent by prepaid post, on the fourth Business Day (or the tenth (10th) Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours UK time on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 UK time on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

H6. Financial Reports

- a. The Contractor shall submit to the Authority's Representative (Commercial) Financial Reports on the form and frequency specified by the Authority's Representative.
- b. The provision of these reports by the Contractor and receipt by the Authority's Representative (Commercial) shall be in accordance with the Condition H1 (Management Information). These Reports shall not prejudice any rights of the Authority or the Contractor under the Contract.

H7. Compliance with the Electronic Transactions Agreement

- a. For the Term of this Contract the Contractor shall have in place an Electronic Transactions Agreement in the form of DEFFORM 30. The Contractor shall comply with the provisions of the Electronic Transactions Agreement.

H8. Enquiries

- a. All enquiries relating to this Contract should be addressed to the Authority's Representative (Commercial), in accordance with Condition H4 (Authority's Representatives) as appropriate to the Contract.