



MOD

Tender Number:
JFC3/049

Gothic APS Support & Maintenance

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1. SCHEDULE OF REQUIREMENTS

1Spatial Group Ltd Tennyson House Cambridge Business Park Cowley Road Cambridge CB4 0WZ	MINISTRY OF DEFENCE	Tender No JFC3/049
	Schedule of Requirements for Gothic APS Support & Maintenance from 18th February 2019	
Issued With DEFFORM 47ST	On 12th February 2019	Previous Contract No JFIG/00193

Requirements

Item Number	Description	Notes to Supplier	Price £ (ex-VAT)
1	Support & Maintenance of Gothic APS		In accordance with Schedule 1, Pricing Schedule

Note: If delivery requirement is blank, please refer to separate instructions/requirements

2 GENERAL CONDITIONS

DEFCON68 (Edn.02/19) - Supply of Data for Hazardous Articles, Materials and Substances

DEFCON501 (Edn.11/17) - Definitions and Interpretations

DEFCON503 (Edn.12/14) - Formal Amendments to Contract

DEFCON514 (Edn.08/15) – Material Breach

DEFCON515 (Edn.02/17) - Bankruptcy and Insolvency

DEFCON516 (Edn.04/12) - Equality

DEFCON518 (Edn.02/17) - Transfer

DEFCON520 (Edn.05/18) - Corrupt Gifts and Payments of Commission

DEFCON526 (Edn.08/02) - Notices

DEFCON527 (Edn.09/97) - Waiver

DEFCON528 (Edn.07/17) - Import and Export Licences

The Contractor's attention is drawn to clause 1 of DEFCON 528 requiring notification of overseas expenditure. In this connection, the Contractor shall, within one month of acceptance of the Contract, notify the Contracts Branch of details of any overseas sub-contract or order he has placed, or intends to place, in aid of the contract. Details to be provided are: Contract No; Country in which sub-contract placed/to be placed; Name, Division and full postal address of sub-contractor; Value of subcontract as applicable to main contract; Date placed/to be placed. If no overseas orders are to be placed, the Contractor shall advise the Contracts Branch to this effect in the same timescale.

DEFCON529 (Edn.09/97) - Law (English)

DEFCON530 (Edn.12/14) - Dispute Resolution (English Law)

DEFCON531 (Edn.11/14) - Disclosure of Information

DEFCON532A (Edn.05/18) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON537 (Edn.06/02) - Rights of Third Parties

DEFCON538 (Edn.06/02) - Severability

DEFCON539 (Edn.08/13) - Transparency

DEFCON550 (Edn.02/14) - Child Labour and Employment Law

DEFCON566 (Edn.12/18) - Change of Control of Contractor

DEFCON620 (Edn.05/17) - Contract Change Control Procedure

DEFCON630 (Edn.02/18) - Framework Agreements

DEFCON656A(Edn.08/16) – Termination for Convenience - Under £5m

DEFCON658 (Edn.10/17) – Cyber Security

Further to DEFCON 658 the Cyber Risk Level of the Contract is Low, as defined in Def Stan 05-138. Accreditation for Cyber Essentials Plus should be maintained and notified to the Authority's Commercial Officer each year by the expiry date of the previous certificate.

2.1 Authority Disclosed Data

a) Subject to clause c, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority during the course of the procurement of this Contract and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority during the course of the procurement of this Contract; or
- ii) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract.

No Relief

b) Subject to clause c, the Contractor shall not be in any way relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient, and shall make its own enquiries as to the accuracy and adequacy of that information.

Fraudulent Statements

c) Nothing in this clause shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any

statements made fraudulently or fraudulent omissions to make statements prior to the date of this Contract.

2.2 Confidentiality

a) Any document, data, technical information, specification or software which is the property of the Authority and is provided to the Contractor for the purposes of this Enabling Contract shall, subject to Clause b below, be treated as received 'in confidence' and used only for the purposes of this Enabling Contract.

- b) Any document, data, technical information, specification or software which is the property of a third party or in respect of which a third party has authority to restrict its dissemination and to which the Authority has access (whether specifically provided for the purposes of the Enabling Contract or otherwise) shall only be used by the Contractor for the performance of the Enabling Contract task. It shall not be copied or used for any other purpose whatsoever, including for the performance of the Contractor's own commercial business, without the prior written permission of the third party concerned.
- c) Clauses a and b above shall not apply to documents, data, technical information, specification or software which:
- i. is in or enters the public domain without breach of Enabling Contract;
 - ii. is released by the Authority expressly without restriction;
 - iii. is, without relevant restrictions, in the possession of the Contractor prior to its receipt from the Authority;
 - iv. is demonstrably received by the Contractor independently of the documents, data, technical information, specification or software provided by the Authority;
 - v. is disclosed free of restrictions by the Authority to a third party.

2.3 Contract Period

- a) This Contract shall take effect on 18th February 2019 and shall expire automatically on 31st March 2020, unless it is otherwise terminated in accordance with this Contract or extended in accordance with clause b below.
- b) The Authority may at its sole discretion extend the term of this Contract by one further period of 12 months. The period will be subject to clause c. The Authority shall give written notice to the Contractor if it wishes to do so no less than 30 (thirty) days before the Expiry Date. The provisions of this Contract will continue to apply throughout any extended period.
- c) The Firm Prices submitted by the Contractor shall apply accordingly to any such extended period.

2.4 Contractor's Obligations

- a) The Contractor must provide the Contract Deliverables and ensure that the Contract Deliverables are provided in accordance:
- i. with Good Industry Practice; and
 - ii. to the entire satisfaction of the Authority.

2.5 Contractor's Status

- a) Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and Contractor.
- b) Save as expressly provided otherwise in this Contract, the Contractor shall not be, nor be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
- c) Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative or the other Party.

2.6 Contractor's Warranties

- a) The Contractor warrants and represents to the Authority that:
 - i. it has full capacity to enter into and perform obligations under this Contract and that this Contract is executed by the duly authorised representatives of the Contractor;
 - ii. the execution, delivery and performance by it of this Contract does not contravene any provision of:
 - iii. any existing Legislation binding on the Contractor, including Legislation which has been enacted but is not yet in force;
 - iv. any order or decree of any court or arbitrator which is binding on the Contractor; or
 - v. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
 - vi. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all 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;
 - vi. 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;
 - vii. 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 (or any equivalent procedure);
 - viii. it shall not, and in entering into this Contract it has not, committed any Prohibited Act; and

ix. there is not and nor has there been any infringement or alleged infringement of any third party's IPR in connection with this Contract,

and the Authority relies upon such warranties and representations.

2.7 Insurance

a) The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the

Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

b) The Contractor shall hold Employer's Liability Insurance in respect of staff in accordance with any legal requirement for the time being in force.

c) The Contractor shall produce to the Designated Officer, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

d) If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract, the Authority may make alternative arrangements to protect his interests and may recover the costs of such arrangements from the Contractor.

e) The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover required.

f) Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.

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

Where any Insurance 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 and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the 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 Insurances whether under the terms of this Contract or otherwise.

2.8 Interpretations

In addition to the Interpretations given in DEFCON 501, the following shall apply to the Contract:

i. for the purposes of this Contract the term 'Articles' shall be deemed to mean 'the maintenance service'.

'Correction' means a modification, alteration, enhancement or replacement to the Software issued

by the Contractor in order to remedy a Fault.

'Default' means any breach of the obligations of either party (including but not limited to fundamental breach or breach of fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or subcontractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other.

- i. 'Fault' means any unusual or undesirable occurrence in respect of the Software or any part thereof.
- ii. 'Fault Report' means a report raised by the Authority in respect of a Fault.
- iii. 'Maintenance Cover Time' (MCT) means the scheduled operating period for the maintenance cover time.
- iv. 'Month' means calendar month.

'New Release' means a new release of the Software incorporating modification, alterations, enhancements or replacements to the Software by the Contractor to any party including, but not limited to, the Authority.

2.9 Precedence

a) If there is any inconsistency between the provisions of the General Conditions of Contract, the Special Conditions of Contract and the remaining Schedules to JFC3/049, the conflict shall be resolved according to the following descending order of priority:

- i. the General Conditions of Contract (all Defence Conditions (DEFCON ***))
- ii. the Statement of Requirement (SOR) dated 22nd May 2018 – Annex A

2.10 Representatives

References to Authority and Contractor

a) Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:

- i. the giving of consent;
- ii. the delivering of any notices; or
- iii. the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,
- iv. shall be deemed to be references to the Authority's Representative and the Contractor's Representative (respectively) in accordance with this clause.

Contractor's Representative

b) The Contractor shall appoint a person as the "Contractor's Representative" to act as the Contractor's representative in connection with the provision of the Contract Deliverables and generally in connection with this Contract.

Authority of Contractor's Representative

c) The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Unless notified in writing before such act or instruction, the Authority shall be entitled to treat any act of the Contractor's Representative which is authorised by this Contract as being expressly authorised by the Contractor and the Authority shall not be required to determine whether authority has in fact been given.

d) The Contractor shall ensure that the Contractor's Representative acts in accordance with the Contractor's Representative's powers and functions in this Contract.

Authority's Representative

e) The Authority shall appoint the persons whose names, addresses and telephone numbers are set out in DEFFORM 111, boxes 1 & 2, as the "Authority's Representatives" to act as the Authority's representatives in connection with this Contract.

Authority of Authority's Representatives

f) The Authority's Representatives shall have full authority to act on behalf of the Authority for all purposes of this 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 are 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.

g) The Authority shall ensure that the Authority's Representatives act in accordance with the Authority's Representatives' powers and functions in this Contract.

h) The Authority shall not be responsible for any Contract Deliverables supplied on the verbal or written order of any person other than the Authority's Representatives.

2.11 Sub-Contracts

In addition to DEFCON 518 (Edn 02/17) – Transfer, the Contractor shall not place any sub-contract under this Contract without prior approval by the Stakeholder Project Board and written approval of the Commercial Branch.

2.12 Termination

The Authority may terminate this Contract at any time by giving 20 business days' notice in writing to the Contractor.

The Authority may at any time by notice in writing terminate this Contract forthwith if the Contractor is in Default of any obligation under this Contract and:

- i. the Default is capable of remedy and the Contractor shall have failed to rectify the Default within thirty (30) days of written notice to the Contractor specifying the Default and requiring its remedy; or

- ii. the Default is not capable of remedy;
- iii. termination in accordance with this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

2.13 Whole Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

3 SPECIFICATIONS, PLANS, ETC

DEFCON129J (Edn.11/16) - The Use of The Electronic Business Delivery Form

DEFCON502 (Edn.05/17) - Specifications Changes

DEFCON602B (Edn.12/06) - Quality Assurance (Without Deliverable Quality Plan)

DEFCON627 (Edn.12/10) - Quality Assurance - Requirement for a Certificate of Conformity

3.1. Quality Assurance Representative

All reference to the QAR in documents which form part of this Contract shall be read as referring to the Authority specified in Box 7 of DEFFORM 111.

3.2 Additional Resources

In the event that the software fails to operate in accordance with the Published Specification, the Contractor shall, at the request of the Authority and without prejudice to the Authority's other rights and remedies, arrange all such additional resources as are necessary to correct the said failure as early as practicable thereafter and at no additional charge to the Authority.

3.3 Computer Viruses

a) The Contractor warrants that it shall use all reasonable endeavors, including using the latest version of its virus checking software, to guard against the introduction of Viruses into the Authority system.

b) In the event that either party becomes aware that a Virus has been introduced, they should immediately inform the other party and the Contractor shall co-operate with the Authority to seek to eradicate the Virus and restore the system to its pre-infection state.

3.4 Fault Recording and Record Keeping

a) In the event that the end user shall become aware of a fault in the software the end user shall submit a Fault Report during MCT to the Contractor's designated point of contact or with the Contractor's answering service or other (continuous) telephone coverage provided to permit the Authority to make such contact.

b) A Fault Report shall comprise details of:

- i. the identity of the author of the Report;
- ii. the version and release number of the relevant Software;
- iii. the nature of the fault; and
- iv. priority of the fault.

c) The end user shall maintain at the Premises a daily log recording any Fault which occurs.

d) The daily log referred to in the Condition shall be in a format agreed between the Contractor and the end user and shall be available for inspection by the Contractor.

3.5 Maintenance Cover Time

a) The Maintenance Cover Time is 0900 hrs to 1700 hrs Monday to Friday excluding Bank Holidays.

b) The Authority reserves the right to vary such periods by giving not less than 28 days notice in writing to the Contractor.

3.6 Scope of Contract

a) The Contractor shall provide support for the software packages which shall include, but is not limited to, telephone support, fault correction and new releases of the software throughout the period of the contract.

b) The Contractor agrees to correct all coding errors in the software specified in the Schedule of Requirements provided that the software has not been altered or modified in any way by the Authority without the prior approval of the Contractor in which event this requirement shall be null and void. The Contractor shall not be responsible for any changes made to the software by the Authority except that this shall not prevent the Contractor from providing updates to the software.

3.7 Software Warranties and Representations

The Contractor warrants and represents that, throughout the term of this Contract;

- i. the Contractor has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
- ii. the Software shall operate in accordance with the Published Specifications;
- iii. the Software shall operate in and be fully compatible with the Operating Environment;
- iv. the Authority's receipt of the Software shall not infringe any industrial commercial or other rights or any Intellectual Property Rights of any third party;
- v. the Software shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel; and the Contractor shall discharge its obligations hereunder with all due skills care and diligence including but not limited to good industry practice

vi. and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

3.8 Statement of Requirement

The requirement is defined within Annex A, Statement of Requirement (SOR) and all work shall be carried out in accordance with this Annex.

4 PRICE

DEFCON619A (Edn.09/97) – Customs Duty Drawback

DEFCON643 (Edn.12/14) - Price Fixing (Non-qualifying contracts)

DEFCON811 (EDN12/14) Single Source Profit and Loss sharing on Firm/Fixed Price Contract

DEFCON812 (EDN 04/15) Single Source Open Book

DEFCON813 (EDN 12/14) Single Source Contract Reports and Notifications

DEFCON814 (EDN 02/19) Single Source Confidentiality of Open Book & Reporting

4.1 Equality of Information Pricing Statement

Pricing has been agreed in accordance with the Equality of Information Pricing Statement at Annex B. (Annex B to be inserted prior to contract award)

4.2 Price

Unless otherwise stated in the Contract, the Contract Prices stated within Schedule 1 shall be firm, ie not subject to variation, and shall be the total price for the Services including the cost of all labour, materials, equipment, holiday relief or substitute as and when necessary, overheads, disbursements, travel and subsistence costs and all other costs of the Contractor in connection with the Contract for full and proper performance by the Contractor.

a) The total contract value will increase during the life of the Contract as onsite technical support and engineering support call off days are used.

5 INTELLECTUAL PROPERTY RIGHTS

DEFCON90 (Edn.11/06) - Copyright

DEFCON91 (Edn.11/06) - Intellectual Property Rights in Software

DEFCON632 (Edn.08/12) - Third Party Intellectual Property - Rights and Restrictions

6 LOANS

DEFCON76 (Edn.12/06) - Contractor's Personnel at Government Establishments

For the purposes of this Contract, the Contractor's liability under Clause 3 and 4 of DEFCON 76 (Edn 12/06) shall be limited to £15m (fifteen million) per incident, excluding any liability for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors.

DEFCON611 (Edn.02/16) - Issued Property

DEFCON694 (Edn.07/18) – Accounting for the Property of the Authority

6.1. Licences

Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge 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 elsewhere in the Contract.

6.2. Government Furnished Assets (GFA)

Software packages belonging to the Authority will be issued to the Contractor as GFA.

6.3 Liability

1.1 Subject to Clause 1.2 the Contractor's liability to the Authority in connection with this Contract:

- a. under clause 2 of DEFCON 514 shall not exceed **Redacted** in aggregate; and
- b. under Clause 8 of DEFCON 611 shall not exceed **Redacted** in aggregate;

1.2. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:

- a. for: i. any service credits or other similar deductions (to the extent expressly provided for under this Contract);
ii. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;

b. for any liability that would not have been incurred but for the Contractor failing to use reasonable steps to mitigate such liability;

c. in relation to any matter governed by Clause 1.1 where any applicable limitation of liability forming part of that provision has been agreed by the Authority in reliance on information (including in relation to insurance) submitted by or on behalf of the Contractor prior to contract award, such information being materially inaccurate or untrue;

d. under DEFCONs 91, 632, 638 and 811;

e. for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;

- f. for fraud, fraudulent misrepresentation, wilful misconduct or negligence;
- g. in relation to the termination of this Contract on the basis of abandonment by the Contractor;
- h. for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or
- i. for any other liability which cannot be limited

1.3. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

7 DELIVERY/PERFORMANCE

DEFCON5J (Edn.11/16) - Unique Identifiers

Where used in conjunction with contracts for services, Clause 4 of the DEFCON shall not apply.

DEFCON507 (Edn.10/18) – Delivery

7.1 Acceptance

- a) Acceptance of the service will take place in accordance with clause b below –
- b)
 - i. Software Fixes – next monthly meeting
 - ii. High Priority Faults – following successful testing on the test environment and successful loading to the live environment
 - iii. On Site Support Days – next monthly meeting
 - iv. Engineering Support Days – following successful testing on the test environment and successful loading to the live environment of associated work package.

7.2 Support Service Credit Scheme

a) Should the specified repair time for Support Service Severity P5 be exceeded within a given contract financial quarter, a Service Credit Clause comes into force. The Service Credit will be calculated against a target serviceability level which will be expressed as a percentage. This is defined as follows -

- i. For calculation purposes, it will be assumed that there are 91 days in a contract financial quarter.
- ii. The contract does not cover weekends or bank holidays, therefore it will be assumed that there are 63 working days in a contract financial quarter.
- iii. A working day is specified as 0900 – 1700 (8 hours) Monday to Friday excluding Bank and Public Holidays. There are therefore 504 working hours in a contract financial quarter (8 hours x 63 days). The 504 working hours represent the 100% requirement for the software to be on-line and serviceable for No 1 AIDU tasking.

- iv. Support Service Severity P5 faults have a permissible total repair time of 8 working hours. This can be expressed as 1.5% of the total 504 working hours for which the software is required to be on line. This enables a Support Service Severity P5 fault target serviceability level of 98.5% to be expressed (100% - 1.5%).
- b) Should the permissible repair time be exceeded, the target serviceability level percentage will not be achieved. The actual serviceability level will then be calculated, and subtracted from the target level. The difference (delta) is the percentage of the quarterly maintenance payment, which will be refunded as a Service Credit. If there are multiple instances of the target serviceability level not being reached within a quarterly maintenance period, then the deltas will accumulate into a combined percentage for deduction.
- c) As an example, should the total repair time amount to 20 working hours, the actual serviceability level will be calculated as follows -
 - i. $20 \text{ (repair time)} / 504 \text{ (quarterly working hours)} \times 100 = 3.9$
 - ii. $100\% - 3.9\% = 96.1\%$
 - iii. Therefore, the actual serviceability level attained is 96.1%, which is below the specified target level of 98.5%. The difference is 2.4% which will be deducted from the quarterly maintenance instalment as a service credit.
- c) The actual serviceability percentages will accumulate to provide an average that will become a statistical indicator as to how the contractor is performing.

8 PAYMENTS/RECEIPTS

DEFCON513 (Edn.11/16) - Value Added Tax

DEFCON522 (Edn.11/17) - Payment and Recovery of Sums Due

DEFCON534 (Edn.06/17) - Subcontracting and Prompt Payment

8.1 Disputed Amounts

- a) The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract ("Disputed Amount") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, subject to notifying the Contractor of such belief (and the reasons for it) on or before the day on which the Disputed Amount would (but for this clause 9.1) otherwise fall due.
- b) The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- c) Within 5 (five) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to clause a above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

- i. to retain in a permanent basis any amounts withheld pursuant to clause a; and
- ii. to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, together with any interest on any such amount at the
- iii. Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

d) If the Contractor responds pursuant to clause c that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause a above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under DEFCON 530 (Dispute Resolution (English Law)).

e) If the determination of any Dispute conducted pursuant to clause d shows that:

- i. the Authority has withheld any amount which the Contractor was entitled to be paid; or
- ii. the Contractor has claimed under DEFCON 522 (Payment) any amount which it was not entitled to be paid, the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

8.2 Payment

a) Payment for support & maintenance will be paid quarterly in arrears. Each quarterly payment will equate to 1/4 of the applicable annual price as quoted in Schedule 1. Quarterly payments will be due on 31st March, 30th June, 30th September and 31st December where these dates fall

b) within the period.

c) Payment for Engineering Support and Onsite Technical Support days will be made following satisfactory completion of the associated work package.

d) Any Service Credits due to the Authority in accordance with clause 7.1, will be deducted from the quarterly (Q) payment due in 2 quarters time e.g. Repair time exceeded in Q2, Service Credit due in Q4.

e) 5% of the last quarterly payment (Q10) will be retained to allow any service credits from Q9 & Q10 to be deducted. The balance due will be paid within 30 days of the end of the Contract.

9 CONTRACT ADMINISTRATION

DEFCON604 (Edn.06/14) - Progress Reports

For the purposes of the Contract, the frequency of reports shall be Monthly.

DEFCON605 (Edn.06/14) - Financial Reports

For the purposes of the Contract, the frequency of reports shall be Monthly.

DEFCON609 (Edn.08/18) - Contractor's Records

DEFCON642 (Edn.06/14) - Progress Meetings

9.1 CONTRACTOR'S RECORDS (in addition to DEFCON 609 (Contractor's Records))

a) The Contractor shall maintain all records as are specified elsewhere in this Contract, including (whether or not specified elsewhere in this Contract, and without prejudice to any other express provisions in this Contract relating to such information) records relating to:

all incidents relating to health, safety and security which occur during the term of this Contract;
all claims made by a third party against either Party in connection with this Contract;

i. all claims made under any policy of insurance that the Contractor is required to maintain pursuant to clause 17 (Insurances);

ii. all disputes dealt with pursuant to DEFCON 530 (Dispute Resolution (English Law)) that arise during the term of this Contract; and

iii. all financial information (including details of payments to the Contractor and any Sub-Contractors) pertaining to this Contract that is held or generated by the Contractor in the course of fulfilling its obligations under this Contract,

and make them available to the Authority as the Authority may reasonably require when requested upon reasonable notice.