



Ministry
of Defence



DE&S

Draft Contract Number:

UKMFTS/2017/03

Description:

UKMFTS/2017/03 - Air Support to Defence Operational Training (ASDOT)

UKMFTS ASDOT Team

MoD Abbey Wood, #7001

BRISTOL, BS34 8JH

DESUKMFTS-ASDOT-Cmrcl-Industry@mod.gov.uk

Amendment Record Sheet

To record the incorporation of a Contract Amendment, sign against the appropriate CA No and insert the date of incorporation. Amendments should be incorporated in numerical order.

CA No.	AMENDED BY	DESCRIPTION (Incl. RCA/RFA No.)	DATE	TOTAL VALUE
As Let		ASDOT Contract as Let RCA:	TBC	TBC
1				
2				
3				
4				
5				
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7				
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9				
10				

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BETWEEN:

THE SECRETARY OF STATE FOR DEFENCE acting as part of the Crown (the “**Authority**”); and
XXXXXXX registered in England and Wales as company number XXXXXXXX and having its registered office at XXXXXXXXXXXXXXXXXXXX (the “**Contractor**”).

BACKGROUND:

The Authority wishes to procure an Air Support to Defence Operational Training Service.
The Contractor has agreed to provide the Contractor Deliverables in accordance with the terms of this Contract.

IT IS HEREBY AGREED AS FOLLOWS:

Definitions and Interpretations

1.1 In the Contract:

1.1.1 the terms and phrases defined set out in Schedule 1 (*Definitions*) shall have the meanings given to them in that Schedule; unless the context requires otherwise.

1.2 In the Contract unless the context otherwise requires:

1.2.1 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;

1.2.2 the singular includes the plural and vice versa;

1.2.3 words and phrases, the definitions of which are contained or referred to in Part 38 of the Companies Act 2006, shall be construed as having the meanings so attributed to them;

1.2.4 any reference to a “person” includes any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state, or joint venture, and includes their successors and permitted assignees or transferees;

1.2.5 references to any enactment, order, regulation, or other similar instrument (including any European Union (EU) instrument) shall be construed as a reference to the enactment, order, regulation, or instrument (including any EU instrument) as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation, or instrument (including any EU instrument);

1.2.6 references to “the Contract” or to any other Contract or document referred to in the Contract means these terms and conditions, supplemented, modified or novated from time to time, and include the Schedules;

1.2.7 reference to Clause(s) and Schedule(s) are references to Clause(s) and Schedule(s) of and to the Contract unless stated otherwise, references to paragraphs are, unless otherwise stated, references to paragraphs of the Schedules in which the reference appears;

1.2.8 references to any document being in agreed terms are to that document in the form signed, or initialled, by, or on behalf of, the Parties for identification;

1.2.9 any reference to “writing” shall include typewriting, printing, lithography, photography, telex, facsimile and the printed-out version of a communication by electronic mail and other modes of representing or reproducing words in a legible form;

1.2.10 references to any DEFCON are, unless otherwise stated, references to the edition of such DEFCON set out in Clause 3 (*General Conditions*).

1.2.11 Where BS (British Standard)/EN/ISO 9000 or documents in the Allied Quality Assurance Publication (AQAP) 100 series form part of the Contract either by reference in the special 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 in those documents:

- (a) 'the Purchaser' means 'the Authority';
- (b) 'the Purchaser's Representative' means 'the Representative of the Authority';
- (c) 'the Project Management Authority' or 'Progress Authority' means the authorities so designated in the Contract.

1.2.12 Any decision, act, or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority.

1.2.13 Except where otherwise provided for within the terms of the Contract or where required by law, references to submission of documents in writing shall not include electronic submission unless signed in accordance with a formal method of authentication as agreed between the Parties.

Headings

1.3 The headings and sub-headings are inserted for convenience only and shall not affect the construction of the Contract.

Schedules

1.4 The Schedules to the Contract form part of the Contract so that the Parties shall comply with them and they shall be taken into account in the interpretation of the Contract.

2 GENERAL CONDITIONS

DEFCON 76 (Edn.12/06) - Contractor's Personnel at Government Establishments

DEFCON 501 (Edn.11/17) - Definitions and Interpretations

DEFCON 503 (Edn.12/14) - Formal Amendments to Contract

DEFCON 507 (Edn.10/98) - Delivery

DEFCON 515 (Edn.02/17) - Bankruptcy and Insolvency

DEFCON 516 (Edn.04/12) - Equality

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DEFCON 520 (Edn.05/18) - Corrupt Gifts and Payments of Commission

DEFCON 526 (Edn.08/02) - Notices

DEFCON 527 (Edn.09/97) - Waiver

DEFCON 528 (Edn.07/17) - Import and Export Licences

DEFCON 529 (Edn.09/97) - Law (English)

DEFCON 530 (Edn.12/14) - Dispute Resolution (English Law)

DEFCON 531 (Edn.11/14) - Disclosure of Information

DEFCON 532B (Edn.05/18) - Protection of Personal Data

DEFCON 537 (Edn.06/02) - Rights of Third Parties

DEFCON 538 (Edn.06/02) - Severability

DEFCON 539 (Edn.08/13) – Transparency

DEFCON 550 (Edn.02/14) - Child Labour and Employment Law

DEFCON 566 (Edn.03/18) - Change of Control of Contractor

DEFCON 619A (Edn.09/97) – Custom Duty Drawback

DEFCON 620 (Edn.05/17) – Contract Change Control Procedure

DEFCON 644 (Edn.07/18) - Marking of Articles

DEFCON 658 (Edn.10/17) - Cyber - Further to DEFCON 658 the Cyber Risk Level of the Contract is under the supplier-cyber-protection web site

<https://www.gov.uk/guidance/supplier-cyber-protection-service> reference number RAR-8PZZ8N5T resulting in a risk assessment as Moderate.

DEFCON 659A (Edn.02/17) - Security Measures

For the purpose of DEFCON659A, the Secret Information r of the Contract is defined in the Department's Security Aspects Letter (SAL) at Schedule 13 (ASDOT Security Aspects)

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

DEFCON 670 (Edn.02/17) - Tax Compliance

2.1 CONTRACT DURATION

2.1.1 Subject to the provisions of Clause 2.2 (Contract Options) below, this Contract and the rights and obligations of the Parties to this Contract shall take effect on the Effective Date and, except as set out in clause 9.2 (Continuing Obligations), shall terminate on the earlier of:

- (a) the Projected Expiry Date and
- (b) the Termination Date.

2.1.2 Full Operating Capability (FOC) shall take place on the date 18 (eighteen) months from the Effective Date [Insert Date]

2.2 CONTRACT OPTIONS

2.2.1 The Authority shall, on giving the Contractor 6 (six) months written notice prior to the commencement of each option period, have the following irrevocable options to extend (at its sole discretion) the Contract duration as specified in Clause 2.1 by;

- (a) a period of 3 (three) years from the Projected Expiry Date;
- (b) a further period of 2 (two) years beyond the 3 (three) years extension under Clause 2.2.1(a) for a combined extension period of 5 (five) years from the Projected Expiry Date;
- (c) a period of 5 (five) years from the Projected Expiry Date.

2.2.2 The Price for these options shall be the Price in accordance with Schedule 5 (*Price and Payment*).

2.3 CONTRACTOR'S AND SUB-CONTRACTOR'S PERSONNEL

2.3.1 The Contractor shall ensure that it has sufficient Suitably Qualified and Experienced Personnel (SQEP) resource to provide the Contractor Deliverables under the Contract.

2.3.2 The Contractor shall recruit and retain SQEP to deliver the Service and shall provide to the Authority a full list of all SQEP personnel by post and role and their location from the Effective Date. The list shall be updated and kept current with all updates provided to the Authority.

2.3.3 The Contractor shall create, maintain and manage a SQEP database for all its personnel, listing individual by name, job description, security clearance (including access to

US International Traffic in Arms Regulations (ITAR) controlled articles), detail relevant qualifications, certifications and the scope of work they are authorised to undertake including dates of validity. The SQEP database shall be made available to the Authority on demand. Details of the experience and qualifications required are at Schedule 7 (*Contract Management and Governance*) Annex 1.

2.3.4 The Contractor shall publish and implement a drugs and alcohol policy for its personnel employed under the Contract and provide a copy to the Authority on demand.

2.3.5 The Contractor shall provide access to personnel records (Flying Log Books and Training Records) and operating documents (records of sorties completed, training documentation, training plans) and any other documents the Authority may reasonably request to enable the Authority to conduct independent assurance of the Service.

2.3.6 If, notwithstanding any other conditions of this Contract, the Contractor is unable to provide SQEP resource which impacts on the Contractor's ability to deliver the Service, the Authority reserves the right to terminate this Contract in accordance with Clause 7.5 (Termination).

2.4. DISPUTE RESOLUTION

2.4.1 The Parties agree to the following procedure under Clause 1 of DEFCON 530 (Dispute Resolution):

Should a Dispute arise, either Party may inform the other Party in writing of the nature of the Dispute and the matter in Dispute. In the event of a Dispute, all delivery or performance remedies associated with the matter in Dispute shall be suspended until the matter in Dispute is resolved. In the event the matter in Dispute is resolved in favour of the Authority all delivery and performance remedies due during the matter in Dispute shall become due to the Authority.

2.4.2 The following Dispute resolution processes shall be followed:

Within 10 (ten) Business Days of the notification of the Dispute by either Party the Contractor's Project Manager and the Authority's Project Manager shall meet and seek mutual resolution of the Dispute. Both Parties agree to reasonably provide supporting data as may be requested.

2.4.3 In the event that the Dispute is not resolved at the aforementioned session, within 5 (five) Business Days of the meeting, both Parties shall summarise their positions in writing and submit these for resolution to the Contractor's Commercial Director and the Authority's Head of Commercial United Kingdom Military Flying Training Systems (UKMFTS) (DES UKMFTS Hd-Cmrc). These two should meet within the next 10 (ten) Business Days and seek mutual resolution of the Dispute.

2.4.4 In the event that the Dispute is not resolved at the aforementioned session, within 5 (five) Business Days of the meeting, both Parties shall summarise their positions in writing and submit these for resolution to the Contractors [Insert appropriate appointment of Contractors equivalent at 1-Star level] and United Kingdom Military Flying Training Systems (UKMFTS) Head (DES UKMFTS Hd). The Parties agree that in the event the Dispute is not resolved at the aforementioned level then the matter shall be referred to arbitration. Under

Clause 3 of DEFCON 530 (Dispute Resolution), the appropriate arbitrator shall be a CMMI® Approved Assessor. Both Parties agree to accept the decision of the arbitrator as binding and final.

2.5 ORDER OF PRECEDENCE

2.5.1 In the event of any discrepancy, inconsistency, divergence or anomaly arising between the provisions of the Contract, the order of precedence shall be as follows, save where expressly provided to the contrary:

- (a) Contract Narrative Conditions and the definitions in Schedule 1;
- (b) Contract DEFCONs;
- (c) Contract Schedules 4 (Additional Work), Schedule 5 (Price and Payment), Schedule 6 (Performance Management), Schedule 7 (Contract Management and Governance), Schedule 9 (SOR) and Schedule 11 (List Of MAA Regulatory Publications);
- (d) Defence Standards, and other Standards
- (e) Schedule 3 (SOW);
- (f) Remaining Schedules;
- (g) All other Contract Appendices and Annexes

2.5.2. In the event of any internal conflict in any document or any conflict between any documents with the same order of precedence, the Authority shall be entitled to give directions as to which part of the relevant document or which document shall take precedence over which other part or which other document. The Authority's directions in the matter shall be final and conclusive.

2.6 OBLIGATIONS OF THE PARTIES

2.6.1 In consideration of the Authority agreeing to make payments as set out in the Contract, the Contractor shall, subject to the terms and conditions of the Contract, deliver the requirements as set out at Schedule 9 (SOR) and in accordance with Schedule 3 (SOW),

Contractor's Obligations

2.6.2 The Contractor shall provide the Contractor Deliverables and/or shall ensure that the Contractor Deliverables are provided in accordance with;

- (a) Legislation;
- (b) the Contractor's approved QA systems
- (c) all Necessary Consents;
- (d) Good Industry Practice;
- (e) all responsibilities of the Contractor in the Contract.

2.7 CONTRACTOR WARRANTIES AND REPRESENTATIONS

Contractor Warranties

2.7.1 The Contractor warrants and represents to the Authority that:

- (a) it has the corporate power to enter into and to exercise its rights and perform its obligations under the Contract and any Sub-Contracts that it enters into;
- (b) it is not subject to any claim, litigation, arbitration, proceedings or any other obligation which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
- (c) so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any Third Party's IPR in connection with the Contract; and
- (d) its entering into, delivery and performance of the Contract has been validly authorised by all appropriate corporate and other action and that all its obligations under the Contract constitute legally valid, binding and enforceable obligations.
- (e) and the Authority relies upon such warranties and representations.

Contractor Undertakings

2.7.2 The Contractor undertakes that for so long as the Contract remains in full force:

- (a) it shall give the Authority notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority ("Dispute Forum") against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of the Contract, the Contractor's ability to perform its obligations under the Contract, unless such notice is precluded by the rules of the Dispute Forum. Such notice to the Authority shall be given within 20 (twenty) Business Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof; and
- (b) it shall not undertake the performance of its obligations under the Contract otherwise than through itself or a Sub-Contractor.

Status of Contractor Warranties and Undertakings

2.7.3 None of the warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in the Contract shall be given a limited construction by reference to any other.

2.8 NECESSARY CONSENTS

2.8.1 The Contractor shall:

- (a) obtain and maintain all Necessary Consents which may be required for the provision of the Contractor Deliverables under the Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;
- (b) assist the Authority to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain;

(c) be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant Legislation;

(d) provide to the Authority, when required, a copy of:

(i) any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);

(ii) any Necessary Consent; and

(iii) any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent,

where such agreement permits such disclosure;

(e) comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such Necessary Consent or associated legally binding agreement is breached by it or any Contractor Responsible Party; and

(f) use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Contractor Deliverables to the Authority.

2.8.2 References in the Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

2.8.3 The Authority shall, subject to the Contractor's compliance with Clause 2.8.1 b) (*Necessary Consents*), use all reasonable endeavours to obtain Necessary Consents that, as a matter of law, only the Authority is eligible to obtain.

2.8.4 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expenses (including legal costs) incurred by the Authority in respect of any breach of Clause 2.8 (*Necessary Consents*) by the Contractor and/or any act or omission of any Sub-Contractor that results in such breach.

2.8.5 The Authority shall indemnify and keep indemnified the Contractor against all losses, claims, damages, liabilities, costs and expenses (including legal costs) incurred by the Contractor in respect of any breach of Clause 2.8 (*Necessary Consents*) by the Authority.

2.9 CONTRACTOR RESPONSIBLE PARTIES

2.9.1 The Contractor shall be responsible and liable for the acts and omissions of the Contractor Responsible Parties in the performance of the Contract as if they were the acts and omissions of the Contractor.

2.10 APPROVAL BY THE AUTHORITY

2.10.1 Except for a confirmation of a Change pursuant to DEFCON 503 (Formal Amendments To Contract) or DEFCON 620 (Contract Change Control Procedure) which expressly changes the Contractor's obligations or liabilities or the Authority's rights or

obligations under the Contract and/or save as expressly stated in the Contract and/or where the Authority's Representatives are acting in accordance with Clause 9.4 (*Representatives*), no review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities or the Authority's rights under the Contract.

2.11 NOT USED

2.12 NOT USED

2.13 PERSONNEL SECURITY

2.13.1 The Contractor shall ensure that all Contractor Responsible Parties shall make themselves familiar with, and shall at all times comply with all applicable MOD policies and additional orders, rules and regulations specified by the Station Commander of the Authority Establishment they are visiting.

2.13.2 The Authority reserves the right to refuse access to, or remove anyone from an Authority Establishment who fails to comply with all applicable MOD policies and additional orders, rules and regulations specified by the Station Commander of the Authority Establishment they are visiting.

2.13.3 Should a Contractor Responsible Party be reasonably refused access to, or be removed from an Authority Establishment for failure to comply with Authority Establishment rules and regulations, the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full.

Security Clearance

2.13.4 The Contractor shall be responsible for ensuring that the details of each Contractor Responsible Party are provided to the Authority for the purposes of security clearance. Where it is a requirement that any Contractor Responsible Party be of a required clearance level before undertaking particular work as specified in the Security Aspects Letter (SAL) at Schedule 13 (*ASDOT Security Aspects Letter*) to this Contract, the Contractor shall ensure the validity of the security clearance throughout the term of employment.

Admission to Authority Establishments

2.13.5 The Contractor shall provide the Authority with details of such Contractor Responsible Party and any other details the Authority may require together with details of the Authority Establishment to which access is required and the capacity in which such person is concerned with the provision of the Contractor Deliverables.

2.13.6 The Authority shall issue a pass for all Contractor Responsible Parties who are security cleared to an appropriate level for the Authority Establishment pursuant to Clause 2.13.4 and who have been notified to the Authority pursuant to Clause 2.13.5, on or before such person enters an Authority Establishment in connection with the provision of the Contractor Deliverables. Passes shall remain the property of the Authority and the Contractor shall ensure that passes shall be surrendered on demand and on termination or expiry of the Contract, except where otherwise agreed between the Parties.

2.13.7 A person not in possession of a pass who is required by the Contractor or any Sub-Contractor to attend an Authority Establishment to provide emergency reactive services shall

be allowed temporary admission to the Authority Establishment if the Contractor shall, or shall secure that any Sub-Contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Establishment by a member of the Contractor's or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 2.13.6.

2.13.8 Whilst engaged at the Authority's Establishments the Contractor shall, and shall procure that any Sub-Contractor shall, ensure that all Contractor Responsible Parties and other accompanied emergency reactive workers pursuant to Clause 2.13.7 comply with all applicable MOD policies and additional orders rules and regulations specified by the Station Commander of the Authority Establishment they are visiting.

2.13.9 Notwithstanding the provisions of Clauses 2.13.5 to 2.13.7 (inclusive), the Authority may refuse any person admission to an Authority Establishment or require the removal of any person from an Authority Establishment:

- (a) if such person is not in possession of a pass pursuant to Clause 2.13.6 or is not an accompanied emergency reactive worker pursuant to Clause 2.13.7;
- (b) if such person, in the Authority's opinion, represents a risk to themselves or an Authority Related Party or property;
- (c) if the Authority has reasonable grounds for considering that the presence or conduct of such person at the Authority Establishment is undesirable; or
- (d) for any other reason.

2.13.10 The Authority's decision on any matter arising under this Clause 2.13 shall be final and conclusive.

2.13.11 If any person is refused admission to an Authority Establishment or is removed from an Authority Establishment the Contractor shall make alternative arrangements at their own expense.

Police, Guards and Security

2.13.12 The Contractor Related Parties shall co-operate with and obey instructions or directions given by MOD Police, Military Police and uniformed guards, in pursuance of their duties.

2.13.13 The Contractor shall consent to the servants or officers of the Authority searching any vehicles, containers, equipment, work bags and other chattels owned by the Contractor, his employees, agents or Sub-Contractors whilst the chattels are on, or as a condition of access to, an Authority Establishment. Routine checks may be carried out on those entering or leaving an Authority Establishment, and persons must be prepared to accept as a condition of entry the obligations to be stopped and searched and to have their vehicles examined. The Authority also reserves the right to expel persons from the Authority Establishment who do not consent to being searched.

2.14 CONTRACTOR INDEMNITIES AND LIABILITIES

2.14.1 The Contractor shall, subject to Clause 2.14.2 and DEFCON 684 (*Limitation upon Claims in respect of Aviation Products*) be responsible for, and release and indemnify the Authority and its employees and agents and contractors from and against all liability:

- (a) for death or personal injury;
- (b) for breach of statutory duty applicable to the Contract; and
- (c) for Third Party actions, claims, and/or demands including costs, charges and expenses (including legal expenses on a standard basis),

which arise out of or in consequence of the default or non-performance by the Contractor of any of its obligations under the Contract or the negligent act or omission or wilful misconduct of the Contractor or its Sub-Contractors save to the extent that such liability arises as a result of the default or non-performance by the Authority of any of its obligations under the Contract or the negligent act or omission or wilful misconduct of the Authority, its employees, agents or Contractors (excluding the Contractor and its Sub-Contractors).

2.14.2 Except where otherwise expressly stated in the Contract, nothing contained in the Contract shall affect any liability the Contractor may have to a Third Party arising out of its default or non-performance or its negligent act or omission or wilful misconduct and shall not be construed as an indemnity by the Authority against any claims originating with Third Parties, provided that if a claim is raised directly against the Authority but in respect of which the Authority is entitled to an indemnity from the Contractor, then the Authority shall allow the Contractor to have conduct of the claim at its own cost provided that the Contractor:

- (a) gives security to the Authority for any costs or liability arising out of the conduct of the claim by the Contractor;
- (b) consults with and keeps the Authority reasonably informed of the conduct of the claim;
- (c) does not settle or compromise or prejudice the defence to any such claim without the prior consent of the Authority (not to be unreasonably withheld or delayed); and
- (d) does not bring the name of the Authority into disrepute in any way in its conduct of the action,

and provided always that notwithstanding the foregoing the Authority shall at all times have the right to refuse to allow the Contractor to have conduct of the claim if the Authority considers that conduct of the claim should be retained by the Authority on grounds of national interest including national security.

2.14.3 Notwithstanding any other provisions of the Contract, neither Party shall be entitled to recover compensation or make a claim under the Contract in respect of any Loss that it has incurred to the extent that it has already been compensated in full in respect of that Loss pursuant to the Contract or otherwise.

2.15 NOT USED

2.16 CONTRACTOR INSURANCES

2.16 Insurance

2.16.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 16 - (*Required Insurances*) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 16 and any other insurances required by law (together the "Required Insurances"). The Contractor shall ensure that the

Required Insurances are effective in each case not later than the date on which the relevant risk commences.

2.16.2 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.

2.16.3 Where specified in Schedule 16 the Contractor shall ensure that the relevant policy of insurance:

- a. shall contain an indemnity to principals clause or additional insureds 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 in respect of this Contract;
- b. names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.

2.16.4 The Contractor shall not (and the Contractor shall procure that none of its sub-contractors of any tier 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.

2.16.5 If the Contractor is in breach of Clause 2.16.1, the Authority may elect, but shall not be obliged, 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.

2.16.6 The Contractor shall, upon the date of this Contract and within fifteen (15) Business Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet the requirements of this Clause 2.16 and Schedule 16. The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 2.16 shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.

2.16.7 The Contractor shall notify the Authority at least ten (10) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

2.16.8 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 receives a claim relating to the services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

2.16.9 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:

- a. incident or circumstances which may give rise to a claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Contract and the Required Insurances; and

- b. if the incident or circumstances may give rise to any claim in connecting with this Contract which may be in excess of the limits of Required Insurances in Schedule 16.

2.16.10 The Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any Required Insurances required by this Contract including any circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority's separate interests.

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

2.16.12 Where any Required Insurance referred to in Schedule 16 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 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 Required Insurances whether under the terms of this Contract or otherwise.

2.16.13 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.

2.16.14 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in Schedule 16 shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

2.17 HEALTH AND SAFETY AT WORK

2.17.1 The Contractor shall take into account any special considerations arising from Authority Establishment safety plans when performing its operations.

2.17.2 Health and Safety policy statements shall be construed only as regards Health and Safety matters and shall not override any particulars of the Contract.

2.17.3 The Contractor shall integrate into the Authority Establishment's Health and Safety organisation as required by the Authority and shall participate fully in such meetings, discussions and committees as the Authority may from time to time direct.

2.17.4 The Contractor shall draw to the attention of the Authority any procedures, practices or processes which it may wish to introduce and which may have a direct bearing on Health and Safety.

2.17.5 Where the Contractor considers that safety plans are not in line with Legislation they are to inform the Authority in writing immediately, clearly defining their concerns.

2.18 CO-OPERATION WITH INQUIRIES, SAFETY AND SECURITY INVESTIGATIONS

Inquiries

2.18.1 In the event that an accident or other incident occurs and that a Service Inquiry is convened pursuant to The Armed Forces (Service Inquiries) Regulations 2008, which are set

out in Statutory Instrument 2008/1651, the Contractor shall make available to the Officer in Charge of that Inquiry all relevant information and facilities including access to its Contractor Responsible Parties for the purpose of immediate and detailed investigations. If so requested by the Investigating Officer, the Contractor shall undertake its own investigation into, for example, flight safety accidents or incidents and shall submit written reports to that Officer.

2.18.2 In connection with any such Inquiry, the Contractor shall take all steps to seek to ensure that any Contractor Responsible Parties, whose evidence may assist the Inquiry in reaching its findings, attends and gives evidence to the Inquiry. If any of the Contractor obligations under the Contract are Sub-Contracted, the Contractor shall include as a condition in the Sub-Contract a stipulation that the Sub-Contractor shall take all steps to seek to ensure that any of its Contractor Responsible Parties whose evidence may assist a Service Inquiry in reaching its findings shall attend and give evidence to that Inquiry when called upon to do so.

Security Investigations

2.18.3 The Contractor shall, and shall procure that each Sub-Contractor shall, notify the Authority's Representative immediately it becomes aware that a Contractor Responsible Party or an accompanied emergency reactive worker pursuant to Clauses 2.13.5 to 2.13.11 (*Admission to Authority Establishment*) has breached Clause 2.13 (*Personnel Security*).

2.18.4 The Contractor shall, and shall procure that its Sub-Contractors shall, give assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of carrying out any security investigation that the Authority undertakes.

Other Investigations

2.18.5 The Contractor shall provide such assistance to the Authority as described in Clauses 2.18.1 to 2.18.4 above to any safety investigation and such other investigations that fall within the Air Safety domain.

2.19 FAULT INVESTIGATION

2.19.1 Fault reporting and investigation shall be carried out in accordance with the provisions and/or procedures set out in Schedule 3 (*SOW*) and the relevant Military Aviation Authority (MAA) Regulatory Publications. The Contractor shall take a full and active part in any fault investigations and reporting conducted in accordance with such provisions and/or procedures, and shall provide any Components or materials that may be required to facilitate the investigation or reporting. Components liable for fault investigation reporting shall be quarantined for up to 28 (twenty-eight) Calendar Days, pending transfer for investigation as directed by the Authority. Upon notification that investigation is not required, or expiry of the 28 (twenty-eight)-Calendar Day period without notification being received, the quarantined Component may be returned to the normal spares stock pool for repair or disposal.

2.20 ENVIRONMENTAL PROTECTION

2.20.1 The Contractor shall ensure that at all times during the performance of the Contract the Contractor, its Sub-Contractors, or their respective Employees or agents or any other

Person the Contractor authorises to be present at any of the Authority Establishments or who performs any part of the activities under the Contract (a “Contractor Responsible Party”) shall exercise “Good Environmental Management” which shall mean carrying out and abiding by the following provisions:

- (a) comply with Environmental Law in relation to its occupation and use of the Premises and the use of the Authority Establishment and the performing of its activities under the Contract;
- (b) comply with Authority Regulations in relation to its occupation and use of the Premises and the use of the Authority Establishment and the performing of its activities under the Contract;
- (c) comply with the duty of care in respect of waste pursuant to section 34 of the Environmental Protection Act 1990 as may be amended or substituted during the period of the Contract;
- (d) comply with the principles of ISO14001 or its equivalent;
- (e) in respect of the Premises keep a record of the nature, amounts and use of Hazardous Materials brought on to or otherwise stored or used at the Premises including details of the operations in which the materials are used and the location in which they are stored;
- (f) in respect of the Premises, report promptly to the Authority with details of:
 - (i) any acts, events or circumstances which involve the deposit or spill of, mixing or inadvertent use of Hazardous Materials in quantities or circumstances which may at any time require Remediation in order to prevent or minimise the harmful effects of the materials on the environment, human health and property; and
 - (ii) any indication or detection of pre-existing contamination of which the Contractor becomes aware including the location of such pre-existing contamination which may give rise to a breach of Environmental Law;
- (g) subject to Clause 2.20.6 and consistent with Good Industry Practice remove any contamination of the Premises attributable to:
 - (i) the performance of its activities under the Contract, or
 - (ii) its activities or its occupation and use of the Premisesin accordance with Clauses 2.20.3, 2.20.4 and 2.20.5; and in any event such removal to be completed by the end of the Contract Period;
- (h) ensure that no conduct of a Contractor Responsible Party of which the Contractor is aware or ought reasonably to be aware:
 - (i) puts the Authority in breach of Environmental Law, or
 - (ii) is capable within 1 (one) Year from the end of the period of the Contract of putting the Authority in breach of Environmental Law (as such Environmental Law stands immediately prior to the end of the period of the Contract and disregarding any changes to Environmental Law which may take place after the end of the period of the Contract); and
 - (iii) take steps to make itself aware of any pre-existing contamination affecting the Premises.

2.20.2 In respect of the Premises, the Contractor shall ensure acting in accordance with Good Industry Practice that at all times the effects (including on the environment, human health and property) of:

(a) any Contamination or pre-existing contamination of which the Contractor is aware; and

(b) any Environmental Losses attributable thereto are minimised to the extent reasonably possible; provided that the Contractor shall not have a continuing obligation to minimise the effects of that pre-existing contamination or that occurrence of Contamination after the date on which such Remediation is commenced in accordance with Clauses 2.20.3, 2.20.4, 2.20.5 and 2.20.6.

2.20.3 In respect of any Contamination in relation to the Premises caused or permitted by or attributable to any acts or omissions of a Contractor Responsible Party which requires or may require Remediation during the period of the Contract in order to prevent or minimise its effects on the performance of the Contractor's activities under the Contract, the environment, human health and property, the Contractor shall submit proposals promptly to the Authority for Remediation which shall be implemented by the Contractor when approved, such approval not to be unreasonably withheld or delayed by the Authority. Any Remediation carried out under this Clause 2.20.3 shall be at the expense of the Contractor.

2.20.4 In the event of any Contamination in relation to the Premises which in the reasonable opinion of the Contractor requires emergency Remediation in order to prevent or minimise its effects on the performance of the Contractor's activities under the Contract, the environment, human health and property, the Contractor shall implement emergency Remediation to the extent required by the nature of the emergency and shall notify the Authority as soon as possible thereafter. For the avoidance of doubt, the provisions of Clauses 2.20.3 and 2.20.6 (as relevant) shall apply to the Contamination in relation to the Premises as soon as the requirement for emergency Remediation has ceased or is minimised to an acceptable level. Any Remediation carried out under this Clause 2.20.4 shall be at the expense of the Contractor save to the extent that Clause 2.20.6 is applicable when it shall be at the expense of the Authority.

2.20.5 In the event that the Contractor fails to comply with the provisions of Clause 2.20.4, the Authority may draw up and implement its own reasonable and proportionate proposals for Remediation which shall be at the expense of the Contractor save to the extent that Clause 2.20.6 is applicable and the Contractor shall provide such access, assistance and co-operation as may be necessary to allow the Authority to exercise its rights under this Clause 2.20.5.

2.20.6 In the event of pre-existing contamination or Contamination in relation to the Premises which is caused or permitted by the Authority or an Authority Responsible Party or attributable to any of its acts or omissions which in the reasonable opinion of the Contractor requires or may require Remediation at any time during the period of the Contract in order to prevent or minimise its effects on the performance of the Contractor's activities under the Contract, the environment, human health and property, the Contractor shall notify the fact to the Authority and the Authority shall as soon as reasonably practical either:

(a) carry out such Remediation as it considers to be necessary in the circumstances at the expense of the Authority; or

(b) request that the Contractor carries out any necessary Remediation at the expense of the Authority in accordance with Clause 2.20.3.

2.20.7 When requested to do so by the Authority, the Contractor shall provide the evidence that it is required to maintain in order to demonstrate compliance with the Environmental Protection Act 1990.

Indemnities relating to Pre-Existing Contamination and Environmental Losses

2.20.8 In respect of any claim by a Third Party for death, personal injury or sickness caused by pre-existing contamination in relation to the Authority Establishment:

(a) the Authority shall indemnify the Contractor against all losses suffered or incurred by the Contractor as a result of, or in connection with, any such claim to the extent that:

(i) the death, personal injury or sickness in respect of which the claim is made was caused by pre-existing contamination; and

(ii) the Contractor has complied with its obligations in relation to Clause 2.20.2

(b) the Contractor shall indemnify the Authority against all losses suffered or incurred by the Authority as a result of, or in connection with, any such claim to the extent that:

(i) the death, personal injury or sickness in respect of which the claim is made was caused by pre-existing contamination, and

(ii) the effect of such pre-existing contamination on the Third Party is the result of the Contractor's negligence or breach of statutory duty or breach of its obligations pursuant to Clause 2.20.2.

2.20.9 The Contractor shall indemnify the Authority for all Environmental Losses suffered or incurred by the Authority and which are caused or permitted by a Contractor Related Party, or attributable to any of its acts or omissions on Authority Establishments, provided that the Authority shall take all steps reasonably necessary to minimise any such Environmental Losses.

2.20.10 To the extent that the Contractor suffers or incurs any Loss in respect of:

(a) Pre-existing contamination, or

(b) Contamination caused or permitted by or attributable to any acts or omissions of the Authority or an Authority Responsible Party,

it shall be entitled to claim and receive compensation from the Authority in respect of such Loss to the extent that:

(c) the Loss was the result of one of the circumstances set out in Clauses 2.20.10 (a) to 2.20.10 (b);

(d) the Loss could not reasonably be expected to be avoided, mitigated or recovered by the Contractor; and

(e) the Loss is not recoverable through the Contractor's insurance arrangements whether concluded for the specific purposes of the Contract or not. For the avoidance of doubt, nothing in this Clause 2.20.10 is intended to affect rights of subrogation arising from the Contractor's insurance arrangements.

2.20.11 The Contractor's entitlement to claim compensation under Clause 2.20.10 shall be conditional upon the following:

(a) the Contractor shall have complied with its obligations in relation to Clause 2.20.2;

and

(b) where under any agreement between the Contractor and an Authority Responsible Party the Contractor has a right to make a claim against the Authority Responsible Party in respect of such pre-existing contamination or contamination:

(i) the Contractor shall take all steps to enforce such rights and to recover its costs of so doing from the Authority Responsible Party;

(ii) to the extent that the Contractor receives an amount pursuant to such a claim that the Contractor would also be entitled to recover from the Authority but for this Clause 2.20.11 (b) (ii) and Clause 2.20.11 (b) (i), the Authority's liability to the Contractor shall be reduced by such amount;

(iii) the Authority's liability to the Contractor shall include the Contractor's reasonable, properly incurred and documented costs of enforcing such rights to the extent that such costs are not recovered by the Contractor from the Authority Responsible Party.

2.20.12 If the Authority disagrees that any of the circumstances set out in Clause 2.20.10 has occurred (or disputes the consequences of such a circumstance), or that the Contractor is entitled to any compensation under that Clause, or the Parties cannot agree the extent of any compensation under the provisions of that Clause, the Parties shall resolve the matter in accordance with DEFCON 530 (*Dispute Resolution (English Law)*)

2.21 SUB-CONTRACTING

2.21.1 Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract. The Contractor shall be responsible for the acts and omissions of the Sub-Contractors as though such acts or omissions are its own.

2.21.2 The Contractor shall inform the Authority at the earliest opportunity, but in any event no later than 5 (five) Business Days, after it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in DEFCON 520 (*Corrupt Payments and Payments of Commission*), Clause 2.20 (*Environmental Protection*), and if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

2.21.3 The Contractor shall not place any Sub-Contract or order which may involve the creation of Intellectual Property in order to provide the Contractor Deliverables without the prior written consent of the Authority. Unless otherwise agreed, such consent will be conditional on the proposed Sub-Contractor concluding a direct agreement with the Authority in the form set out in Schedule 15 (*Design Rights and Patents - Sub-Contractor's Agreement*). Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor. If, in any case the Contractor is unable to comply with this condition it shall report the matter to the Commercial Officer named in the Appendix to Contract and await further instructions before placing the subcontract or order.

2.21.4 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Information to the Sub-Contractor, the Contractor shall:

a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor

which the Authority shall reasonably require;

b) incorporate into the Sub-Contract the terms of DEFCON 659A (*Security Measures Provisions to be included in Relevant Sub-Contracts*) and such secrecy and security obligations as the Authority shall direct;

c) inform the Authority immediately it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

2.22 DISCLOSURE OF INFORMATION

2.22.1 In addition to the provision of DEFCON 531 (Disclosure of Information) the Contractor shall take every precaution to ensure that information of a military nature arising from or connected with the Contract, particularly as to location, numbers and movements of troops, aircraft and ships, is divulged only to the minimum number of Contractor Responsible Parties and then only to the extent essential to each person's action in carrying out the Contract. The Contractor shall not in any circumstances allow access by Contractor Responsible Parties to general information such as lists of units or their locations and shall restrict the information given to each Contractor Responsible Party to that relating only to the Authority Establishment with which such Contractor Responsible Party is personally concerned.

2.22.2 No information regarding the Contractor Deliverables being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with the prior written permission of the Authority to whom any press or other enquiry on any such matter should be referred. Such permission shall not be unreasonably withheld or delayed by the Authority.

2.23 CONTROLLED INFORMATION

2.23.1 This Clause shall apply in addition to and notwithstanding DEFCON 531 (*Disclosure of Information*) or any other confidentiality condition of the Contract.

2.23.2 For the purposes of this Clause, 'Controlled Information' shall mean any information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend 'Controlled Information' or other approved legend notified to the Contractor. Controlled Information shall exclude information provided by oral communication

2.23.3 The Contractor shall:

a) hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Contract;

b) not to copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;

c) not to disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;

d) protect the Controlled Information diligently against unauthorised access and against loss; and

act diligently to ensure that:

i) Controlled Information is disclosed only to its employees and only to the extent necessary for the purpose of discharging its obligations under the Contract;

ii) employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.

2.23.4 Where Controlled Information is provided to the Contractor, it shall:

a) compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;

b) maintain this register for the duration of the Contract and for 2 (two) years following completion of the Contract;

c) make the register of access available to the Authority upon notice for inspection and audit for so long as it is required to be maintained under this Clause; and,

d) at the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

2.23.5 This Clause shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other information to the extent that it can show:

(a) that the information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the Parties;

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

(c) that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or

(d) from its records, that the information was derived independently of the Controlled Information.

2.24 US-UK DEFENCE TRADE CO-OPERATION TREATY

2.24.1 Should the Contractor intend to supply Articles of United States (US) origin the export of which from the United States of America (USA) are subject to control under the ITAR, the Contractor shall in furtherance of its compliance with DEFCON 528 (Import and Export Licences) inform the Authority so that the Authority can make a decision whether the export can or cannot be made under the auspices of the US-UK Defence Trade Co-operation Treaty. The Authority shall then convey its decision to the Contractor. If the Authority decides that use of the Treaty for the export is permissible, it is nevertheless the

responsibility of the Contractor to make a final decision whether it wishes to avail itself of that route for the export concerned.

2.24.2 Where any of the Articles are subject to ITAR control on delivery to the Authority under the Contract and the Contractor or one of its suppliers subsequently wishes to convert that control to that available under the Treaty instead, either during the Contract term or at any time thereafter, the Contractor or its supplier shall not do so without first obtaining the prior written consent of the Authority.

2.25 SECURITY INCIDENTS AFFECTING MOD MATERIAL

2.25.1 Any Security Incident involving MOD owned, processed or generated information, or defence information owned by a Third Party which the MOD is responsible for, is to be reported immediately to the MOD defence industry, Warning Advice and Reporting Point (WARP) and The Joint Security Coordination Centre (JSyCC).

2.25.2 The immediate requirement is for an initial notification of a Security Incident and in this respect prompt notification is of the essence. It is recognised that it may not be possible to provide a full assessment of the incident at this stage. Incidents should initially be reported

to a non-protectively marked level, by telephone or email to the JSyCC Operations desk (See contact details at Schedule 18 (*Appendix - Addresses and Other Information*)).

2.25.3 The Contractor shall provide the following details except where information is not available and obtaining the information would cause a delay of the initial report being submitted.

- (i) Name of company reporting the Loss/breach/compromise.
- (ii) Contact details of person submitting the report, including role within the company and their email address along with any other relevant contact details.
- (iii) Confirmation that the Loss/breach/compromise directly or indirectly affects the MOD.
- (iv) What is the highest protective marking of the information compromised.
- (v) Whether the Loss/breach/compromise in relation to a list X facility.
- (vi) The name(s) of the contracting Authorities affected by the Loss/breach/compromise.
- (vii) What happened.
- (viii) Where did it happen.
- (ix) The nature of the Loss/breach/compromise.
- x) Whether personal data is involved.
- xi) Number of incidents or quantity of data involved.
- xii) Initial view of impact of Loss/breach/compromise.
- xiii) initial mitigation taken/planned.
- xiv) next expected update.

2.25.4 The Contractor shall take all steps to comply with the advice issued by the Authority with regards to the incident.

2.25.5 The Contractor shall comply with any Authority request for additional reports where information listed at Clause 2.25.3 above becomes available when it was not included within the initial report.

2.26 WHOLE AGREEMENT

2.26.1 The Contract, including all its schedules, annexes, parts and appendices, constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, and undertakings, whether written or oral, except that this Clause 2.26.1 shall not exclude liability in respect of any fraudulent misrepresentation.

2.27 BANK OR PARENT COMPANY GUARANTEE

2.27.1 The Contractor shall obtain and provide to the Authority a bank or parent company guarantee, on a joint and several basis, by award of Contract and maintain it throughout the Contract Period. The bank or parent company guarantee is at Schedule 12.

3 SPECIFICATIONS, PLANS, ETC

DEFCON 502 (Edn.05/17) - Specifications Changes

DEFCON 601 (Edn.04/14) - Redundant Material

DEFCON 602A (Edn.12/17) – Quality Assurance (With DQP)

For the purposes of this Contract the DQP shall comply with the requirements of Data Item Description (DID) 03

DEFCON 606 (Edn.06/14) - Change and Configuration Control Procedure

DEFCON 607 (Edn.05/08) - Radio Transmissions

DEFCON 608 (Edn.10/14) - Access and Facilities to be Provided by the Contractor

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

3.1 QUALITY ASSURANCE REPRESENTATIVE (QAR)

3.1.1 All reference to the QAR in documents which form part of this Contract shall be read as referring to the Authority's Authorised Representative specified in Box 7 of Schedule 18 (*Appendix - Addresses and Other Information*)

3.2 DEFENCE STANDARDS

3.2.1 Except where expressly stated elsewhere in the Contract, and subject to the various Notes set out in this Clause 3.2.1, the following AQAPs and Defence Standards ("DEF STANSs") shall apply:

Defence Standards

00-003	Design Guidance for the Transportability of Equipment	Iss 6
00-035	Part 2 Environmental Handbook for Defence Materiel - Environmental Trials Programme Derivation and Assessment Methodologies	Iss 5
00-035	NATO Part 3 Environmental Handbook for Defence Materiel - Environmental Test Methods	Iss 5
00-035	Part 4 Environmental Handbook for Defence Materiel - Natural Environments	Iss 5
00-035	Part 5 Environmental Handbook for Defence Materiel - Induced Mechanical Environments	Iss 5
00-040	Part 1 Reliability and Maintainability – Management Responsibilities and Requirements for Programmes and Plans	Iss 8
00-042	Part 3 Reliability and Maintainability Assurance Activity - R&M Case	Iss 5
00-044	Reliability and Maintainability Data Collection and Classification	Iss 2 Amdt 1
00-051	Part 1 Environmental Management requirements for Defence Systems – Requirements	Iss 1
00-051	Part 2 Environmental Management requirements for Defence Systems - Guidance	Iss 1

00-055	Part 1 Requirements for Safety of Programmable Elements (PE) in Defence Systems - Requirements and Guidance	Iss 4
00-056	Part 1 Safety Management Requirements for Defence Systems - Requirements and Guidance	Iss 7
00-056	Part 2 Safety Management Requirements for Defence Systems - Guidance on Establishing a Means of Complying with Part 1	Iss 5
00-251	Part 0 Human Factors Integration for Defence Systems - Contracting for Human Factors Integration in Defence Systems	Iss 1
00-251	Part 1 Human Factors Integration for Defence Systems - Early Lifecycle Human Factors Integration Process Requirements	Iss 1
00-251	Part 2 Human Factors Integration for Defence Systems - Human Factors Integration Process Requirements for the Solution Provider	Iss 1
00-251	Part 3 Human Factors Integration for Defence Systems - Human Factors System Requirements	Iss 1
00-600	Part 1 Integrated Logistic Support. Requirements for MOD Projects – Integrated Logistics Support (ILS) Requirements	Iss 1
00-600	Part 2 Integrated Logistic Support. Requirements for MOD Projects – MOD Requirements for a Supportability Case	Iss 1
00-600	Part 3 Integrated Logistic Support. Requirements for MOD Projects – Logistic Information Requirements	Iss 1
00-970	Part 1 Section 1 Design and Airworthiness Requirements for Service Aircraft - Fixed Wing - General Requirements	Iss 13
00-970	Part 1 Section 2 Design and Airworthiness Requirements for Service Aircraft - Fixed Wing - Flight	Iss 14
00-970	Part 1 Section 4 Design and Airworthiness Requirements for Service Aircraft - Fixed Wing - Design and Construction	Iss 14
00-970	Part 7 Section 1 Design and Airworthiness Requirements for Service Aircraft - Rotorcraft - Introduction	Iss 6
00-970	Part 7 Section 2 Supplement 1 Design and Airworthiness Requirements for Service Aircraft - Rotorcraft - General - (Subpart A)	Iss 6
00-970	Part 7 Section 2 Supplement 2 Design and Airworthiness Requirements for Service Aircraft - Rotorcraft - Flight - (Subpart B)	Iss 6
00-970	Part 7 Section 2 Supplement 3 Design and Airworthiness Requirements for Service Aircraft - Rotorcraft - Strength Requirements - (Subpart C)	Iss 6
00-970	Part 7 Section 2 Supplement 4 Design and Airworthiness Requirements for Service Aircraft - Rotorcraft - Design and Construction - (Subpart D)	Iss 6
00-970	Part 7 Section 2 Supplement 5 Design and Airworthiness Requirements for Service Aircraft - Rotorcraft - Powerplant - (Subpart E)	Iss 6

00-970	Part 7 Section 2 Supplement 6 Design and Airworthiness Requirements for Service Aircraft - Rotorcraft - Equipment - (Subpart F)	Iss 6
00-970	Part 9 Design and Airworthiness Requirements for Service Aircraft - Remotely Piloted Air Systems	Iss 14
01-005	Fuels, Lubricants and Associated Products	Iss 18
03-050	DTEC Modelling and Simulation (M&S) Standards Profile (DMSP)	Iss 2
05-057	Configuration Management of Defence Materiel	Iss 6
05-061	Part 9 Quality Assurance Procedural Requirements - Independent Inspection Requirements for Safety Critical Items	Iss 5
05-099	Part 1 Managing Government Furnished Equipment in Industry - Provides end to end view of MOD requirements for the management of GFE in Industry	Iss 1
05-099	Part 2 Managing Government Furnished Equipment in Industry - Requirement for the Management of Industry held by a delivery partner (DP), on behalf of the MOD as stated in the DP Contract	Iss 1
05-129	Contractors on Deployed Operations (CONDO) Processes and Requirements.	Iss 5
05-135	Avoidance of Counterfeit Materiel	Iss 1
05-138	Cyber Security for Defence Suppliers	Iss 2
05-061	Part 1 - Quality Assurance Procedural Requirements - Concessions (If applicable, inspection of safety critical items)	Iss 6
05-061	Part 4 - Quality Assurance Procedural Requirements - Contractor Working Parties	Iss 3 Amdt 1
05-061	Part 9 - Quality Assurance Procedural Requirements - Independent Inspection Requirements for Safety Critical Items	Iss 5
59-411	Part 1 Electromagnetic Compatibility - Management and Planning	Iss 2
59-411	Part 2 Electromagnetic Compatibility - The Electric, Magnetic and Electromagnetic Environment	Iss 2
59-411	Part 3 Electromagnetic Compatibility - Test Methods and Limits for Equipment and Sub Systems	Iss 2
59-411	Part 4 Electromagnetic Compatibility – Platform and System Tests and Trials	Iss 2
59-411	Part 5 Electromagnetic Compatibility - Code of Practice for Tri-Service Design and Installation	Iss 2
81-41	Part 1 Packaging of Defence Materiel – Introduction to Defence Packaging requirements	Iss 9
81-41	Part 2 Packaging of Defence Materiel – Design	Iss 9
81-41	Part 4 Packaging of Defence Materiel – Service Packaging Instruction Sheet	Iss 8
81-41	Part 5 Packaging of Defence Materiel – Packaging Process	Iss 8

3.3 OTHER STANDARDS

3.3.1 The following Standards shall apply, and subject to Clause 2.5 (Precedence) and the various Notes set out in this Clause 3.3.1, the Contractor shall perform its obligations under

the Contract in accordance with them or, where more appropriate, in accordance with the principles set out in them:

NATO – Allied Publications

AQAP- 2105	NATO Requirements For Deliverable Quality Plans	Ed 2
AQAP- 2110	Revision 1 N NATO Quality Assurance Requirements For Design, Development And Production	Ed D
AQAP- 2210	NATO Supplementary Software Quality Assurance Requirements To AQAP-2110	Ed A Ver 2
AQAP- 4107	Mutual Acceptance Of Government Quality Assurance And Usage Of The Allied Quality Assurance Publications (AQAP)	Ed A Ver 1
AECP-02	NATO Naval Radio and Radar Radiation Hazard Manual	Ed D Ver 1
ADatP-34	NATO Interoperability Standards And Profiles	Ed J Ver 1
ATP- 3.3.2.1	Tactics, Techniques And Procedures For Close Air Support And Air Interdiction	Ed C

NATO Standards

2345	IEEE Standard For Military Workplaces-Force Health Protection Regarding Personnel Exposure To Electric, Magnetic, And Electromagnetic Fields, 0 HZ To 300 GHZ	Ed 4
4206	The NATO Multi-Channel Tactical Digital Gateway – System Standards	Ed 3
4347	Definition Of Nominal Static Range Performance For Thermal Imaging Systems	Ed 1 Ver 1
4580	Method Of Expressing Navigation Integrity	Ed 1
4661	Product Life Cycle Support	Ed 1
5516	Tactical Data Exchange - Link 16	Ed 4
5524	NATO Interoperability Standards And Profiles (NISP) - ADatP-34	Ed 2

EDSTAR and US Military Standards

DO-178	Software considerations in airborne systems and equipment certification
RTCA/DO-254	Design assurance guidance for airborne electronic hardware
ARP 4754A	Guidelines for development of Civil Aircraft and systems
ARP 4761	Guidelines and methods for conducting the safety assessment process on civil airborne systems and equipment

Civil Standards

ISO 9000:2015	Quality Management Systems
ISO 9001:2015	Quality Management Systems – Requirements

ISO/IEC PDTS 27035-3	Information Technology - Security Techniques Information Security Incident Management-- Part 3: Guidelines for Incident Response Operations	
ISO 14001:2015	Environmental Management Systems	
ISO/IEC 27001:2013	Information Security Management	
ISO/IEC 27002:2013	Information Technology -- Security Techniques -- Code of Practice For ISO/IEC 27035-1:2016	
	Information Technology -- Security Techniques -- Information Security Incident Management -- Part 1: Principles of Incident Management	
ISO/IEC 27035- 2:2016	Information Technology -- Security Techniques -- Information Security Incident Management -- Part 2: Guidelines to Plan and Prepare for Incident Response	
ISO 22313	Societal Security — Business Continuity Management systems — Guidance	
BSEN 62402:2007	Obsolescence Management	
BS EN 61508	Functional Safety of Electrical/Electronic/Programmable Electronic Safety-Related Systems, Parts 1 to 7 2010	
IEC 61508	Functional Safety	
IECTS 62239	Process management for avionics – Management plan – Part 1: Preparation and maintenance of an electronic components management plan	
HMG IA Standard No. 4	Information Security Controls	
HMG IA Standard Numbers 1 & 2	Management of Cryptographic Systems and Supplements Information Risk Management	Issue 6.0 April 2014- OS

Other References

MAA Regulatory Articles	
MAA01	MAA Regulatory Policy
MAA02	MAA Master Glossary
MAA03	MAA Regulatory Processes
Joint Publication 3- 09.3	Close Air Support

MAA RA Series MAA Regulatory Articles (Note: The Contractor shall comply with the requirements of the MAA Regulatory Articles at latest issue as they directly relate to the Contractor Deliverables being provided under the Contract. A full list of the articles applicable may be found at Schedule 11 of the Contract.)

3.3.2 All standards set out in Clause 3.2.1 and 3.3.1 shall at all times apply in their respective latest issues.

3.4 QUALITY ASSURANCE (QA)

3.4.1 The Contractor shall hold and maintain a certification to BS EN ISO9001:2015 issued by a United Kingdom Accreditation Service accredited certification body.

3.4.2 The Contractor shall conduct all activities under the Contract in conformity with BS EN ISO 9001:2015 and the QA requirements of the Defence Standards set out in the Contract. The Contractor shall also ensure that all activities by its Sub-Contractors under

Sub-Contracts placed in connection with the Contract are conducted in conformity with BS EN ISO 9001:2015 and the QA requirements of the Defence Standards set out in the Contract. Where standards have been included in the Contract as guidance only, or in respect of Sub-Contracts which do not contain those standards, or in respect of Sub-Contracts which include those standards for guidance only, QA activities shall be carried out to the satisfaction of the Authority's QAR as detailed in the Appendix to Contract.

3.4.3 The Contractor shall grant the Authority and its Authorised Representatives access, accommodation, and assistance, in accordance with DEFCON 608 (Access and Facilities to Be Provided by the Contractor) and AQAP 2110. In granting such access and assistance, the Contractor shall give the Authority ready access to all work in progress and completed work together with the associated documentation and records of Quality Control Checks for the purpose of carrying out the Authority's own QA monitoring of the Contractor's work and procedures.

3.4.4 The Contractor shall ensure that the provisions in Clauses 1 and 2 of DEFCON 608 (Access and Facilities to Be Provided by the Contractor) are included in all its Sub-Contracts placed in connection with the Contract. Access to such Sub-Contractors shall be arranged by the Authority through the Contractor.

3.4.5 In the event that the Contractor carries out quality audits or arranges for a Third Party to carry out quality audits in respect of the Contract, it shall make a copy of the findings and the report available to the Authority within 10 (ten) Business Days.

3.4.6 For the purpose of QA surveillance duties, the Authority's Authorised Representatives shall be Government Quality Assurance Representatives (GQAR) under the authority of Defence Quality Assurance Group-Field Force (DQAG-FF).

4 PRICE

DEFCON 643 (Price Fixing (Non-Qualifying Contracts)) - Price Fixing (Non-qualifying contracts) For the purposes of amendments and extensions to the Contract only.

4.1 PRICE AND PAYMENT

4.1.1. All sums payable by the Authority and the payment arrangements for all work completed under the terms of this Contract shall be in accordance with Schedule 5 (*Price and Payment*).

4.2 LIQUIDATED DAMAGES

4.2.1. It is recognised by the Parties that if the Contractor fails to deliver the Transition Phase by the date(s) specified in the delivery schedule at [*Insert reference to Transition Phase delivery schedule*], the Authority will suffer loss and damage.

4.2.2. Accordingly, for each day's delay (including bank holidays and weekends) the Contractor shall pay the Authority £ [*Amount to be agreed during negotiation dependent upon tenderers solution*] for delay in delivery of each of the Key Milestones identified in the [*Insert reference to Transition Phase delivery schedule*], as Liquidated Damages. The maximum amount of Liquidated Damages payable by the Contractor under this Clause 4.2 (*Liquidated Damages*) is £[Amount]. The Parties recognise that this sum is significantly less than the losses the Authority would incur should there be a delay in delivery of the Transition

Phase leading to ASDOT FOC, [the Authority has estimated the true value of loss to be £6,000,000 (six million) per month]. However, the Parties agree that the sum represents a reasonable and commercially viable compensation for any loss suffered by the Authority.

4.2.3. The provisions of this Clause are without prejudice to any other rights of the Authority under the Contract, including but not limited to those under DEFCON 514 (Material Breach) and Clause 7.5 (*Termination*). Accordingly, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable under Clause 4.2.2 above until the date of such termination.

4.2.4. Unless expressly stated by the Authority in writing, the provisions of DEFCON 527 (Waiver) shall apply to the Authority's right to recover Liquidated Damages under this Clause.

4.3 CONTINUOUS IMPROVEMENT

4.3.1 The Contractor shall have an obligation throughout the Contract to identify new or potential improvements to the provision of the Contractor Deliverables, including those detailed within the Capability Roadmap, in accordance with this Clause 4.3. The Contractor shall provide a report to the Quarterly Performance Review meeting where it has identified the emergence of new and evolving relevant technologies which could improve the provision of the Contractor Deliverables and those technological advances potentially available to the Contractor and the Authority which the Parties may wish to adopt.

4.3.2 The Contractor shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether an improvement should be considered for implementation including, but not limited to;

- i) Full details of the new or emerging relevant technology.
- ii) The effect of the potential change on the Contractors obligations under the Contract.
- iii) Draft plan for implementation of the change.

4.3.3 The Contractor shall endeavour to provide any further information that the Authority requests.

4.3.4 If the Authority wishes to incorporate any improvement identified by the Contractor the Authority will issue an Authority Notice of Change in accordance with DEFCON 620. The Parties shall negotiate a fair and reasonable price in accordance with DEFCON 643 and the change shall be incorporated into the Contract by amendment in accordance with DEFCON 503.

4.4 EFFICIENCY SAVINGS

4.4.1 The Contractor shall have an ongoing obligation throughout the Contract to identify new or potential improvements to the provision of the Contractor Deliverables in accordance with this clause 4.4 with a view to reducing the Authority's costs and/or improving the quality and efficiency of the Contractor Deliverables and their supply to the Authority as follows;

- i) new or potential improvements to the provision of the Contractor Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Contractor Deliverables;

ii) changes in business processes and ways of working that would enable the Contractor Deliverables to be provided at lower costs and/or at greater benefits to the Authority; and/or

4.4.2 The Contractor shall provide a report to each Quarterly Performance Review meeting of any such efficiency saving opportunity together with sufficient information to enable the Authority to decide if the opportunity is worth pursuing.

4.4.3 If an efficiency saving opportunity is considered acceptable, the Authority shall negotiate a fair and reasonable price in accordance with DEFCON 643 (Price Fixing (Non-Qualifying Contracts) and, if required, an amendment to the Contract in accordance with DEFCON 503.

4.4.4 The share of any financial change arising from agreed efficiency saving opportunities shall be divided 60% (sixty percent) to the Authority and 40% (forty percent) to the Contractor, unless the Parties agree a different allocation of costs/rewards.

5 INTELLECTUAL PROPERTY RIGHTS (IPR)

DEFCON 14 - (Edn.11/05) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

DEFCON 15 (Edn.02/98) - Design Rights And Rights To Use Design Information

DEFCON 21 (Edn.10/04) - Retention of Records

DEFCON 90 (Edn.11/06) - Copyright

DEFCON 91 (Edn.11/06) - Intellectual Property Rights in Software

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

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

6 LOANS

DEFCON 23 (Edn.08/09) - Special Jigs, Tooling and Test Equipment

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

DEFCON 612 (Edn.10/98) - Loss of or Damage to the Articles

DEFCON 694 (Edn.07/18) - Accounting for Property of the Authority

6.1 PROVISION OF GOVERNMENT FURNISHED ASSETS

6.1.1 The Authority shall provide, free of charge and solely for the purposes of the Contract, the Government Furnished Assets listed at Schedule 8 (*Government Furnished Assets*). The items set out in the list shall be made available to the Contractor in accordance with the details set out in this Clause 6.1 (*Provision of Government Furnished Assets*) and Schedule 8 (*Government Furnished Assets*).

6.1.2 The Contractor shall carry out all required maintenance and calibration of all GFE issued to it under the terms of the Contract.

6.1.3 The Contractor shall act with due care and diligence in respect of all Government

Furnished Assets and shall ensure that they are all used in the most efficient manner, avoiding damage and waste where reasonably practicable.

6.1.4 Whilst the Authority shall endeavour to ensure the continued availability of the GFA set out in Schedule 8 (*GFA*), any failure to do so shall not be deemed to be a breach of the Contract. Under such circumstances the Contractor shall continue to perform the Contract subject to any change agreed with the Authority, and shall at all times, take all measures to limit the consequence of such failure.

6.1.5 In addition to its obligations under Clause 3 of DEFCON 611 (Issued Property), the Contractor shall notify the Authority within 5 (five) Business Days in the event any item of GFA is not received by, or available to, it by or at the date specified in the Contract. In such circumstances, the Contractor shall include in such notification proposals for work-around solutions in respect of that item of GFA.

6.1.6 In the event the Parties agree no practical work-around solution is available, and the Authority subsequently fails to provide or replace the element of GFA within a reasonable time of receipt of the notice submitted under Clause 6.1.5, fair and reasonable revisions of the Contract Price shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

6.1.7 Notwithstanding Clause 6 of DEFCON 611 (Issued Property), and Clause 6.1.6, if the Contractor fails to notify the Authority within the specified periods, the Authority shall have no liability in respect of the consequences of such GFA non-availability before the date of the Contractor's notification to the Authority.

6.1.8 On the earlier of the Expiry Date or the Termination Date, the Contractor shall return all GFA to the Authority in their original condition, except for any consumption or fair wear and tear resulting from its normal and proper use in the execution of the Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor).

6.2 INTERDEPENDENT CONTRACTS

6.2.1 If, as a result of any default, negligence and/or breach by the Contractor or any Contractor Responsible Party of any of its or their obligations under or pursuant to any other contracts between the Authority and the Contractor, the Authority is unable to comply with any or all of its obligations under Clause 6.1 (*Provision of GFA*) and/or Schedule 8 (*GFA*) then, notwithstanding any other provision of the Contract:

(a) such failure by the Authority to comply with those obligations shall not be treated as a GFA failure for the purposes of the Contract;

(b) the Contractor shall not be entitled to any relief and/or compensation of whatever nature (including any adjustment to the Price – see Schedule 5 (*Price and Payment*) and howsoever arising in respect of such failure by the Authority to comply; and

(c) nothing shall affect the Authority's right to remedy under Schedule 6 (*Performance Management*) Paragraph 9 (*Remedy for the Contractor's Failure to Perform*).

7 DELIVERY/PERFORMANCE

DEFCON 5J (Edn.11/16) - Unique Identifiers

DEFCON 514 (Edn.08/15) - Material Breach

DEFCON 524 (Edn.10/98) - Rejection

DEFCON 525 (Edn.10/98) - Acceptance.

DEFCON 612 (Edn.10/98) - Loss of Or Damage to The Articles

DEFCON 621B (Edn.10/04) - Transport

DEFCON 656B (Edn.08/16) - Termination for Convenience – Over £5M

DEFCON 681 (Edn.06/02) - Decoupling Clause - Subcontracting with the Crown

7.1 AUTHORITY STEP-IN

7.1.1 If the Authority believes that it needs to take action in connection with the provision of the Contractor Deliverables because:

- (a) a serious risk exists to the health or safety of persons or property or to the environment;
- (b) a Contractor Default has occurred; or
- (c) of a failure to discharge a statutory duty;
- (d) of any other event that in the opinion of the Authority requires the Authority to take action

then the Authority shall be entitled to take action in accordance with Clauses 7.1.2 to 7.1.4 below.

7.1.2 If Clause 7.1.1 applies and the Authority wishes to take action, the Authority will notify the Contractor in writing of the following:

- (a) the action it wishes to take;
- (b) the reason for such action;
- (c) the date it wishes to commence such action;
- (d) the time period which it believes will be necessary for such action; and
- (e) to the extent practicable, the effect on the Contractor and its obligation to provide the Contractor Deliverables during the period such action is being taken.

7.1.3 Following service of such notice, the Authority shall take such action as notified under Clause 7.1.2 above and any consequential additional action as it reasonably believes is necessary (together, the “Required Action”) and the Contractor shall give every assistance to the Authority while it is taking such Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice, as is reasonably practicable, of its anticipated completion.

7.1.4 Where the Required Action has been taken in accordance with Clause 7.1.1 (d), the

Authority shall undertake the Required Action in accordance with Good Industry Practice.

7.1.5 The Authority reserves the right to issue a Required Action Notice at any point. If the Contractor is not in breach of any of its obligations under the Contract as per Clauses 7.1.1 to 7.1.4 then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any of the Contractor Deliverables:

(a) the Contractor shall be entitled to relief from the provisions of Schedule 6 (*Performance Management*) to the extent that the Contractor's failure in performance is wholly attributable to the Required Action; and

(b) in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance, the payment due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period.

7.1.6 NOT USED

Right of Inspection

7.1.7 Notwithstanding the rights stated at Clauses 7.1.1 to 7.1.5, the Authority, including any Authority Representative and/or Authority Authorised Representative, shall have, at all times and upon giving reasonable notice, the right (but not so as to delay or impede the provision of the Contractor Deliverables) to inspect:

(a) the state and progress of the provision of the Contractor Deliverables (and to ascertain whether they are being properly provided), and

(b) the operation and maintenance of any aspect of the Contractor's operation, including those of any Contractor Responsible Parties, and to monitor compliance by the Contractor with its obligations under the Contract.

Inspection of Facilities

7.1.8 The Authority, including any Authority Representative and/or Authority Authorised Representative, shall have the right at all times and on reasonable notice to enter upon any property used by the Contractor and/or a Contractor Responsible Party for the purposes of general inspection and of attending any test or investigation being carried out in respect of the provision of Contractor Deliverables.

Contractor's Assistance

7.1.9 For the purposes of Clauses 7.1.7 and 7.1.8, the Contractor shall procure that satisfactory facilities are made available, and that assistance is given, to the Authority, including any Authority Representative and/or Authority Authorised Representative.

Health and Safety Requirements

7.1.10 In exercising its rights under Clauses 7.1.7 and/or 7.1.8, the Authority, including any Authority Representative and/or Authority Authorised Representative, shall at all times comply with all relevant health and safety procedures and any reasonable directions with regard to safety that may be issued by or on behalf of the Contractor.

Damage

7.1.11 If the Authority, including any Authority Representative causes material damage to

any property belonging to the Contractor, including any Contractor Responsible Party, in exercising its rights under Clauses 7.1.7 and/or 7.1.8, then the Authority shall be liable to the Contractor (or the affected Contractor Responsible Party) for the reasonable costs directly caused by such damage.

7.2 ACCURACY OF INFORMATION

7.2.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Contractor Deliverables identified at Schedule 7 (Contract Management and Governance), Annex 2 (*Contract Deliverable Information*).

7.3 TRANSFER OF RESPONSIBILITY

Transfer In

7.3.1 The Contractor shall facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) as defined at Schedule 7 (*Contract Management and Governance*) from the Outgoing Contractor ensuring that it takes no action that:

- (a) causes any impediment to the provision of the Contractor Deliverables required of the Outgoing Contractor; or
- (b) may prejudice or frustrate or make more difficult any such transfer;

7.3.2 The Contractor shall co-operate with the Outgoing Contractor to enable the efficient transfer of responsibility for the provision of the Contractor Deliverables, and for the purposes of this Clause 7.3 the meaning of the term co-operate shall include but not necessarily be limited to:

- (a) liaising with the Authority and/or the Outgoing Contractor, and providing reasonable assistance and advice concerning the transfer of the Contractor Deliverables from the Outgoing Contractor; or
- (b) providing the Outgoing Contractor with reasonable notice of requests for access to any related assets or information applicable to the performance of the Contract at reasonable times, so as not to interfere with or impede the provision of the Contractor Deliverables.

Transfer Out

7.3.3 At any time before the Expiry Date and/or during the period that any Termination Notice is subsisting, the Contractor shall co-operate with the transfer of responsibility for the provision of the Contractor Deliverables (or part of the Contractor Deliverables) from the Contractor to any person (a "Follow-On Contractor") or to the Authority as so directed by the Authority, and for the purposes of this Clause 7.3 the meaning of the term co-operate shall include but not necessarily be limited to:

- (a) liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the Contractor Deliverables and their transfer to the Authority or such Follow-On Contractor;

(b) allowing any such Follow-On Contractor access to the Aircraft and any related assets applicable to the performance of the Contract, but not so as to interfere with or impede the provision of the Contractor Deliverables; and

(c) providing to the Authority and/or any Follow-On Contractor any relevant information concerning the Authority Establishment and the provision of the Contractor Deliverables which is reasonably required for the efficient transfer of responsibility for the performance of the Contractor's obligations under the Contract.

7.3.4 For a period of 6 (six) months after the Expiry Date or, if earlier, the Termination Date, the Contractor shall, if requested to do so in writing by the Authority, provide all assistance, guidance and information to the Authority or any Follow-On Contractor as may be required.

7.3.5 Without prejudice to the provisions of Clauses 7.3.3 and 7.3.4, the Contractor shall assist the Authority to facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) to the Authority or Follow-On Contractor, as the case may be, and the Contractor shall take no action at any time during the term of the Contract or thereafter which is calculated or intended to prejudice or frustrate or make more difficult any such transfer.

7.3.6 Without prejudice to DEFCON 611 (Issued Property), DEFCON 612 (Loss Of Or Damage To The Articles), DEFCON 694 (Accounting For Property of the Authority) and Clause 6.1 (*Provision of GFA*) during the last 6 (six) months before the Expiry Date or during the period that any Termination Notice is subsisting, the Contractor shall protect and preserve materiel, Articles and Issued Property in its possession, custody or control in which the Authority has an interest, provided that the Contractor shall be entitled to use such material, Articles and Issued Property in accordance with the provisions of the Contract where it is agreed that the provision of the Contractor Deliverables requires the use of that materiel and/or those Articles and/or Issued Property in part or in its entirety.

7.3.7 Following the Expiry Date or, if earlier, the Termination Date, the Contractor shall, with the Authority's consent, be allowed reasonable access to the Authority Establishment by the Authority in order to carry out winding-down activities, provided that in exercising such right of access, the Contractor shall not interfere with or impede the delivery of goods and/or services equivalent to the Contractor Deliverables (and/or the provision of any other services and/or the carrying out of any other activities) by or on behalf of the Authority and/or any Follow-On Contractor.

7.3.8 Except where may otherwise be agreed between the Parties, at the earlier of the Expiry Date or the Termination Date, the Contractor shall deliver to the Authority all assets held by it in pursuance of the Contract, and, where not already the case, ownership in all such assets shall pass to the Authority. For the avoidance of doubt, this provision shall apply to all loan items issued under the Contract by the Authority as well as any and all items procured by the Contractor and allocated by it to the Contract for the purposes of meeting its obligations hereunder. The Parties shall agree the actual assets to be delivered to the Authority no later than 30 (thirty) Business Days before the final day of flying under the Contract. To this end, and no later than 60 (sixty) Business Days before the final day of flying under the Contract, the Contractor shall submit to the Authority a list detailing the quantity of all assets expected to be delivered at the end of the Contract including location, serviceability and any other salient details.

7.3.9 Until such delivery of the assets agreed under Clause 7.3.8 to the Authority, the risk of Loss of or damage to the assets shall remain 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 (except fair wear and tear) which occurs before delivery. For the avoidance of doubt, this provision shall apply notwithstanding that the assets may have been inspected by the Authority, or that the property therein may have passed earlier than upon delivery.

7.3.10 Except where otherwise agreed in writing with the Authority, the Contractor shall return all assets to the maintenance and/or storage facilities at which they were originally supplied by no later than the final day of flying under the Contract.

7.3.11 In the event of a transfer of responsibility of the Contractor Deliverables from the Contractor at the Expiry Date or the Termination Date, the Contractor shall, where requested by the Authority and to the extent it has the right to do so, grant a licence to the Authority or its Follow-On Contractor, to use any and all of the software applications used by the Contractor in fulfilling its obligations under the Contract. Such licence shall be granted on a non-exclusive and royalty-free basis, provided always that where such software applications are proprietary to the Contractor or Third Party, a reasonable charge shall be agreed between the Parties for the granting of such licence.

7.3.12 Except where otherwise agreed in writing with the Authority, the Contractor shall ensure that all such software application licences as are necessary for the effective and efficient support of the Contractor Deliverables following the Expiry Date or the Termination Date are granted by no later than the final day of flying under the Contract.

7.3.13 Except where may be otherwise agreed between the Parties, the Contractor shall, at the Expiry Date or the Termination Date, deliver to the Authority all relevant data. For the purposes of this Clause 7.3.13, relevant data shall be defined as that data created pursuant to the Contract and maintained by the Contractor to meet its obligations under the Contract, and which the Authority and/or its Follow-On Contractor requires to ensure the continued effective operation and maintenance of the Fleet to the same standards as set out in the Contract. Data shall be deemed to be relevant data irrespective of whether it was created and maintained in human readable form, in machine readable form or in any other form, and for the avoidance of doubt relevant data may include data which was not deliverable information under the Contract.

7.3.14 The Contractor shall provide the relevant data at the earliest opportunity following the completion of flying under the Contract in order to ensure the continued and effective provision of services and operation and maintenance of the Fleet, but in any event, no later than 5 (five) Business Days following the final day of flying under the Contract. The Contractor shall provide such data in a format to be agreed with the Authority. Where, in respect of any particular data, the Contractor has already delivered to the Authority the most recent, valid and complete version of that data, it shall be deemed to have already complied with these Clauses 7.3.13 to 7.3.14.

7.3.15 The Parties shall agree the actual content of relevant data no later than 30 (thirty) Business Days before the final day of flying under the Contract. To this end, and no later than 60 (sixty) Business Days before the final day of flying under the Contract, the Contractor shall submit to the Authority a formal proposal setting out (i) the content of relevant data, (ii) a suggested delivery schedule for all elements of data, and (iii) a

suggested format for each element of data.

7.3.16 The Contractor shall meet all its obligations under this Clause 7.3 within the price for Item 1 of the Schedule of Requirements.

7.3.17 The Contractor shall be obliged to co-operate with the Authority and/or its Follow-On Contractor in accordance with this Clause 7.3 where the Contract is terminated under DEFCON 656B (*Termination for Convenience – Over £5M*).

7.3.18 The Contractor, 12 (twelve) months prior to Contract closure or upon the Authority's request, shall provide details that will ensure the smooth transfer to the Authority or a Follow On Contractor of the Contractor Deliverables delivered under the Contract. This shall include but is not limited to the following

- (a) plans for business knowledge transfer;
- (b) plans for the transfer of all data and material, including back-ups, relating to the use and operation of the Contractor Deliverables and systems to the New Provider;
- (c) plans for reporting progress and the content of progress reports;
- (d) an inventory of the Technical infrastructure and GFE;
- (e) a list of Third Party Software used in the delivery of the Contractor Deliverables;
- (f) a fully populated and resourced project plan detailing delivery of Contractor Deliverables until Contract Expiry Date and the transfer activities;
- (g) risk management approach and completed risk log;
- (h) project critical path;
- (i) project dependencies and interoperability of subject areas
- (j) Any other information that shall ensure the smooth transfer of the service.

7.3.19 On termination of the Contract, at any time and for whatever reason, the Authority shall not be liable for additional charge(s) other than those Contract conditions that apportion liability to the Authority in respect of the winding up of the Contract and for the handover by the Contractor, to any successor Contractor or the Authority of all data relevant to the performance of this work by that successor Contractor.

7.3.20 The Contractor shall comply with the requirements of Schedule 10 (TUPE).

7.4 DELIVERABLE DATA FORMATS

7.4.1 The Contractor shall ensure that relevant data can be held, processed, transferred and exchanged using the Authority preferred software tools. Currently these include:

- (a) Microsoft Office tools for narrative documents;
- (b) Primavera P6 for schedules; or outputs that can be translated to a .xer and .xml file as agreed by the Authority;
- (c) Microsoft Excel compatible for numerical reports; and,
- (d) Oracle Unifier

7.4.2 The output of an alternative software system shall be compatible with being translated to a .xer and .xml format file or alternative file as agreed by the Authority. The Contractor shall ensure that the Configuration Management System (CMS) is created in a format that allows an export file compatible with scheduling software defined above or as approved by the Authority.

7.5 TERMINATION

7.5.1 In the event of a Contractor Default occurring in relation to this Contract, the Authority shall, without prejudice to any other remedies set out in the Contract and subject to the provisions of this Clause 7.5, have the right to terminate the whole or any part of the Contract.

7.5.2 Where such Contractor Default has occurred, the Authority shall be entitled to serve a rectification notice on the Contractor, specifying:

- (a) the type and nature of the Contractor Default that has occurred, giving reasonable details; and where relevant
- (b) the part of the Contract that the Authority wishes to terminate as a result, this includes the right to terminate the entire Contract.

7.5.3 Except where otherwise agreed with the Authority, the Contractor shall have 10 (ten) Business Days from receipt of this rectification notice to submit to the Authority in writing a rectification plan, describing the proposed rectification programme including a detailed description and schedule of the activities necessary to rectify the Contractor Default and restore the performance required under the Contract at the earliest opportunity.

7.5.4 In the event that the Parties fail to agree a rectification plan within 10 (ten) Business Days of its formal submission to the Authority, the Authority shall have the right, at its sole discretion, to terminate either the whole or any part of the Contract

7.5.5 Where the Contractor rectifies the Contractor Default in line with the agreed rectification plan and within the time period specified in the rectification plan, the Authority shall not pursue its rights to terminate the Contract under this Clause in respect of that Contractor Default, and the Contract shall continue.

7.5.6 If the Contractor fails to rectify the Contractor Default in line with the agreed rectification plan and within the time period specified in the rectification plan, or such longer time as may be agreed with the Authority, the Authority shall be entitled at its sole discretion to issue to the Contractor a Termination Notice, terminating either the whole or any part of the Contract. The Termination Notice shall specify the date upon which the Contract shall terminate.

7.5.7 Where the Contract or any part thereof is terminated pursuant to this Clause 7.5, the Contractor shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements the Authority may choose to make in accordance with DEFCON 514 (*Material Breach*). If following such assessment where the amount of such Loss is less than the amount outstanding to the Contractor (subject to any other provision of this Contract affecting the level of such payment) for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract then the Authority shall pay the difference to the Contractor.

7.5.8 In the event that the Authority exercises its rights to terminate the Contract under this Clause, the Contractor shall assist the Authority, and whatever Third Party the Authority shall appoint, in implementing a phase-out/phase-in plan to ensure that a satisfactory level of service is provided during the handover period. The Contractor shall be entitled to claim the costs in relation to any transfer activities that the Contractor is required to perform in support of the handover activity. No profit shall be applied to these costs.

7.5.9 Nothing in this Clause 7.5 shall affect the Authority's rights under DEFCON 515 (*Bankruptcy and Insolvency*), DEFCON 520 (*Corrupt Gifts and Payments of Commission*), DEFCON 566 (*Change of Control of Contractor*), DEFCON 658 (*Cyber*), DEFCON 659A (*Security Measures*), DEFCON 670 (*Tax Compliance*) and Clause 2.21 (*Sub-Contracting*). Similarly, nothing in this Clause 7.5 shall affect the Authority's rights to other remedies set out elsewhere in the Contract.

7.6 FORCE MAJEURE

7.6.1. The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract a Force Majeure Event is defined as one of the following:

- (a) Acts of Nature;
- (b) war;
- (c) hostilities;
- (d) fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence.

7.6.2. The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.

7.6.3. Subject to Clause 7.6.4 below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

7.6.4. The maximum extension of time granted under this Clause shall be limited to 90 (ninety) Calendar Days after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect.

7.7 RISK MANAGEMENT

7.7.1 The Contractor acknowledges that any risk assessment which it may undertake in connection with the Contract will be conducted as a project management function only, and any such risk assessment shall not affect the legal relationship between the Parties. The process of the Contractor's risk assessment, including without limitation the identification of (or failure to identify):

- (a) particular risks and their impacts; and

(b) risk reduction and/or mitigation measures, contingency plans and remedial plans shall be entirely without prejudice to the Authority's rights and obligations under the Contract. The risks identified by the Contractor in its risk register shall remain the risks of the Contractor and shall not be assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract.

8 PAYMENTS/RECEIPTS

DEFCON 513 (Edn.11/16) - Value Added Tax (VAT)

DEFCON 522 (Edn.11/17) - Payment and Recovery of Sums Due

DEFCON 534 (Edn.06/17) - Subcontracting and Prompt Payment

DEFCON 129J (Edn.11/16) - The Use of The Electronic Business Delivery Form

8.1 The payments and receipts due to the Contractor for all work completed under the terms of this Contract shall be in accordance with Schedule 5 (*Price and Payment*).

9 CONTRACT ADMINISTRATION

DEFCON 604 (Edn.06/14) - Progress Reports

DEFCON 609 (Edn.06/14) - Contractor's Records

DEFCON 642 (Edn.06/14) - Progress Meetings

DEFCON 647 (Edn.09/13) – Financial Management Information

9.1 CONTRACT MANAGEMENT AND GOVERNANCE

9.1.1 Contract management and governance shall be undertaken in accordance with Schedule 7 (*Contract Management and Governance*).

9.2 CONTINUING OBLIGATIONS

9.2.1 The Contractor shall assist in the Authority's Contract closure activity; including but not limited to:

(a) Attend a lessons learned meeting.

(b) Return all GFA in line with Schedule 8 (GFA) and DEFCON 611 (Issued Property) and DEFCON 694 (Accounting for Property of the Authority).

9.3. NATIONAL AUDIT OFFICE ACCESS

9.3.1 In addition to the access given under DEFCON 532B (Protection of Personal Data) and DEFCON 647 (Financial Management Information), for the purpose of the examination and certification of MOD accounts, or any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which MOD has used its resources, the Comptroller and Auditor General may examine such documents as it may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to produce

such oral or written explanations as it considers necessary. For the avoidance of doubt, it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Contractor is not a function exercisable under the Contract.

9.4 REPRESENTATIVES

References to Authority and Contractor

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

- (a) the giving of consent;
- (b) the delivering of any notices; or
- (c) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,

shall be deemed to be references to the Authority's Representatives and the Contractor's Representatives (respectively) in accordance with this Clause 9.4.

Contractor's Representatives

9.4.2 The Contractor's Representatives shall be those persons fulfilling the functions set out in Annex 1 (*Qualifications and Experience*) to Schedule 7 (*Contract Management and Governance*). The contact details of the Contractor's Representatives shall, at all times, be made known to the Authority and shall include a telephone number on which the Contractor's Representatives or their delegates can be contacted at any reasonable time. The Contractor's Representatives shall have the appropriate training, skills and delegated authority to co-ordinate and ensure the Contractor's proper discharge of its obligations under the Contract.

Authority of Contractor's Representatives

9.4.3 Each of the Contractor's Representatives shall have full authority to act on behalf of the Contractor for those purposes for which that Contractor's Representative is appointed. The Authority and the Authority's Representative shall be entitled to treat any act of the relevant Contractor's Representative in connection with those aspects of the Contract for which that Contractor's Representative is appointed as being expressly authorised by the Contractor (save where the Contractor has notified the Authority in writing that such authority has been revoked) and the Authority shall not be required to determine whether any express authority has in fact been given.

Appointment of Successor

9.4.4 The Contractor may terminate the appointment of any Contractor's Representative and shall appoint a successor, the identity of whom shall be made known to the Authority.

Authority's Representatives

9.4.5 The Authority's Representatives shall be those persons detailed at Schedule 18 (*Appendix - Addresses and Other Information*). The contact details of the Authority's Representatives shall, at all times, be made known to the Contractor and shall include a telephone number on which the Authority's Representatives or their delegates can be contacted at any reasonable time. The Authority's Representatives shall have the

appropriate training, skills and delegated authority to co-ordinate and ensure the Authority's proper discharge of its obligations under the Contract.

Appointment of Successor

9.4.6 The Authority may terminate the appointment of any Authority's Representative and shall appoint a successor, the identity of whom shall be made known to the Contractor.

9.5 DISCREPANCIES, ERRORS AND OMISSIONS

9.5.1 If either Party identifies any discrepancy, error or omission between the provisions of the Contract it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.

9.5.2 The Parties shall seek to agree such amendments to resolve such discrepancy, error or omission as soon as reasonably practical.

9.5.3 Where the Parties fail to reach agreement within 10 (ten) Business Days of the notice under Clause 9.5.1 and either Party considers that the discrepancy, error or omission 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 DEFCON 530 (*Dispute Resolution (English Law)*).

9.6 LEGISLATIVE RISK

9.6.1 The Contractor shall comply with all relevant Legislation and Regulatory Frameworks from time to time in force and shall pay all fees, charges and costs required to be paid under any Legislation or Regulatory Framework pertaining to the provision of any of the Contractor Deliverables and/or to any other matter related to the performance of its obligations under the Contract.

9.6.2 If the Contractor believes that a discriminatory Legislative Change has occurred or is likely to occur it shall notify the Authority in writing as soon as practicable and such notice shall stipulate:

- (a) the nature of such discriminatory Legislative Change;
- (b) the date such discriminatory Legislative Change has or shall come into force;
- (c) any necessary change to the Contractor Deliverables; and
- (d) any fees, charges or costs payable as a result of such Discriminatory Legislative Change.

9.6.3 In the event of a discriminatory Legislative Change or amendment to the contents of Schedule 11 (*List of MAA Regulatory Publications*) the Contract shall be amended in accordance with the change procedure within DEFCON 503 (Formal Amendments To Contract) in respect of any changes arising as a result of the discriminatory Legislative Change provided that the Contractor:

- (a) provides evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs; and

(b) demonstrates that any expenditure that has been avoided, which was anticipated to be incurred, has been taken into account in the amount which in its opinion has resulted or is required under Clause 9.6.2 (d).

9.6.4 In the event of any Dispute as to whether a discriminatory Legislative Change has occurred the Parties shall submit to the procedure set out in DEFCON 530 (*Dispute Resolution (English Law)*) and Clause 2.4.

Payment of Irrecoverable VAT

9.6.5 The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a change in Legislation. Any such payment shall be made within 20 (twenty) Business Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this Clause 9.6.5 (*Payment of Irrecoverable VAT*), "Irrecoverable VAT" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Contractor Deliverables or any of the obligations or provisions under the Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from Her Majesty's Revenue and Customs (HMRC) in respect of such input VAT.

9.7 COMPLIANCE WITH THE MONTREAL PROTOCOL

9.7.1 The Contractor shall be responsible for ensuring that all operations carried out by the Contractor and its Sub-Contractors pursuant to the Contract shall at all times comply with the Authority's policy on the supply of information about substances referred to in the Montreal Protocol as such policy is set out in Schedule 14 (*Montreal Protocol*).

9.8 CONTRACTOR'S STATUS

9.8.1 Nothing in the Contract shall be construed as creating a partnership or as a Contract of employment between the Authority and Contractor.

9.8.2 Save as expressly provided otherwise in the Contract, the Contractor shall not be, nor be deemed to be, an Authorised Representative of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

9.8.3 Neither Party shall place or cause to be placed any order with Sub-Contractors or otherwise incur liabilities in the name of the other Party or any representative or the other Party.

9.9 PUBLIC RELATIONS

9.9.1 The responsibility for communicating with representatives of the popular and technical press, radio, television and other communication media on all matters concerning the Contract and the Authority Establishment shall be borne solely by the Authority through the Defence Public Relations Staff.

9.9.2 The Contractor and its staff shall not communicate on these matters with any communication media representative unless specifically granted permission to do so, in writing, by the Authority. As a rule, information deriving from, or relating to the Contract, the Authority Establishment or the MOD may not be communicated to a Third Party without the specific permission to do so, in writing, from the Authority, provided always that no such permission shall be required regarding information in respect of which the Contractor has a legal or regulatory obligation to communicate such information.

9.10 STATES OF EMERGENCY, PERIODS OF TENSION, TRANSITION TO WAR AND HOSTILITIES

9.10.1 The Contractor shall continue to provide the Contractor Deliverables required in peace, during any state of emergency (whether or not involving hostilities) periods of tension, in transition to war and during hostilities. The Contractor shall provide all the Contractor Deliverables throughout such period of the state of emergency, tension, transition to war or hostility unless directed otherwise by the Authority. The Authority shall advise the Contractor of any changes or additions to the Contract Requirements and the provisions of DEFCON 503 (Formal Amendments to Contract) shall apply, provided that the agreement or determination of any Change pursuant to DEFCON 503 (Formal Amendments To Contract) shall not relieve the Contractor of its obligation to comply with the Authority's directions under this Clause 9.10.1 in the period up to the agreement or determination of such Change.

9.10.2 The Contractor shall also provide any additional support required in the event that the Authority is directed to respond to any national or international emergency, disaster or other unforeseen situation. This shall include the use of Aircraft owned or otherwise provided by the Contractor. In such circumstances, the Authority shall:

- (a) Advise the Contractor of any necessary amendment to the Contract and negotiate a suitable adjustment to its terms and conditions; and
- (b) Resolve any conflicting priorities for the use of Aircraft and the consequent effect on Contract deliverables.
- (c) In time of national crisis, the Authority may have need to requisition resources under the Emergency Powers Act 1964 or Civil Contingencies Act 2004 or any re-enactment thereof following emergency regulation made by an Order in Council or Senior Minister of the Crown, in particular aircraft owned or otherwise provided by the Contractor. There is no requirement to plan for this contingency.

9.10.3 Any action or measures which the Authority may, or is required to, take pursuant to the provision of this Clause 9.10 may validly be taken by the Authority acting through the representative of the Authority or such other person or persons as the Authority may from time to time authorise in writing for that purpose and notify to the Contractor. To the extent that such work is not covered by express agreement between the Parties, the Authority shall pay to the Contractor a fair and reasonable price in accordance with DEFCON 643 (Price Fixing (Non-Qualifying Contracts)) for any work carried out by the Contractor in complying with the Authority's instructions under Clauses 9.10.2 to 9.10.3.

9.10.4 Subject to compliance by the Contractor of its obligation in Clauses 9.10.2 to 9.10.3, the Authority shall further indemnify the Contractor against all Loss it has suffered or will suffer arising out of any action which the Authority may require the Contractor to take

pursuant to Clause 9.10.2 to 9.10.3. The Contractor shall be entitled from time to time to make claims for indemnification under this Clause notwithstanding that further claims for indemnification may arise in the future.

9.10.5 The Contractor shall at all times take reasonable precautions and use all reasonable endeavours to prevent and minimise any Loss, arising from any action which the Authority may require the Contractor to take in accordance with Clauses 9.10.2 to 9.10.3 above.

9.11 RESERVE PERSONNEL

9.11.1 Where the Contractor employs ex-Service personnel who have an existing Regular Reserves commitment to the RN, the Royal Marines, the Army or the RAF and such personnel are employed by the Contractor on tasks which are required to be carried out in transition to war or war, the Contractor is to seek a recall Exemption Certificate from the appropriate Service Reserve Drafting/Posting authority and send a copy of such correspondence to the Authority's Project Manager named in the Appendix to Contract. All applications for Exemption Certificates are to give full details of the duties on which the person is employed. The Contractor shall advise the Authority of such personnel at commencement of employment on tasks which are required to be carried out in transition to war or war, stating whether an Exemption Certificate has been sought or granted.

9.11.2 Unless Exemption Certificates are obtained the Contractor shall replace any Regular Reservists who are recalled to their respective Services with SQEP within a period to be agreed with the Authority.

9.11.3 Members of the Volunteer Reserves of any Service, whether ex-Service personnel or not, who are employed by the Contractor on tasks required during transition to war or war do not require Exemption Certificates. In such cases, the Contractor should encourage the individuals concerned to notify their Volunteer Reserve authority of the nature of their work enclosing a letter from the Contractor stating that the work concerned must continue in transition to war or war.