



**THE SECRETARY OF STATE FOR
DEFENCE**

and

XXXXX

MERLIN AND APACHE ENGINES FUTURE SUPPORT

**CONTRACT NUMBER
HELSS/0102**

THIS CONTRACT is made on xxxxxxxxxxxx
BETWEEN:

(1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”) acting through its authorised Ministry of Defence Commercial Manager within the Merlin Delivery Team hereinafter called the “**Authority**” and

(2) **XXXXXX** (“**The Contractor**”)

BACKGROUND:

- (A) The Authority operates a number of helicopters powered by various marks of the RTM322 gas turbine engine (as further described below) specifically the Merlin and Apache Mk1 Helicopter fleets.
- (B) The Authority wishes to procure in-service support for the Authority’s Merlin and Apache Mk1 Helicopter fleets’ engines to meet its requirements as expressed in the Statement of Requirement at Schedule A of this Contract.
- (C) The Contractor wishes to provide such support in accordance with the terms of this Contract.

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REQUIREMENT

Contractor: XXXX		MINISTRY OF DEFENCE SCHEDULE OF REQUIREMENTS <u>Merlin and Apache Engines Future Support</u>	CONTRACT NO. HELSS/0102
SCHEDULE OF REQUIREMENTS			
ITEM NO	DESCRIPTION	PRICE £ (VAT Ex)	
1	The provision of the Services as set out in Schedule A, Statement of Requirement, in accordance with the terms of this Contract.	Subject to Maximum Target Cost Incentive Fee Arrangements in accordance with Schedule F (Pricing and Payment for Core Services)	
2	Additional Services in accordance with Schedule H	To be agreed in accordance with DEFCONs 811 – 814 and Priced in accordance with DEFCON 127 or 643 as required.	

PART A: GENERAL CONDITIONS**1. DEFCONS AND DEFFORMS****1.1 DEFCONS:**

References in this Contract to any DEFCON shall be construed as a reference to that DEFCON as amended by the following provisions of this Condition 1.1.

The DEFCONS listed in this Condition 1.1, as amended by the same, are incorporated into and form part of this Contract.

DEFCON 5J (Edn 18/11/16)	Unique Identifiers
DEFCON 14 (Edn 11/05)	Inventions And Designs Crown Rights And Ownership of Patents and Registered Designs This DEFCON shall only apply to Additional Services at Schedule H (excluding Non-Attributable Demands)
DEFCON 15 (Edn 02/98)	Design Rights This DEFCON shall only apply to Additional Services at Schedule H (excluding Non-Attributable Demands)
DEFCON 16 (Edn 10/04)	Repair And Maintenance Information
DEFCON 21 (Edn 10/04)	Retention Of Records
DEFCON 23 (Edn 08/09)	Special Jigs, Tooling And Test Equipment
DEFCON 68 (Edn 02/17)	Supply Of Data For Hazardous Articles, Materials And Substances
DEFCON 76 (Edn 12/06)	Contractor's Personnel At Government Establishments
DEFCON 90 (Edn 11/06)	Copyright
DEFCON 91 (Edn 11/06)	Intellectual Property Rights in Software
DEFCON 117 (Edn 10/13)	Supply of Documentation for NATO Codification and Defence Inventory Introduction
DEFCON 126 (Edn 11/06)	International Collaboration
DEFCON 127 (Edn 12/14)	Price Fixing Condition For Contracts of Lesser Value
DEFCON 129 (Edn 04/18)	Packaging (For Articles Other Than Munitions)
DEFCON 129J (Edn 18/11/16)	The Use of Electronic Business Delivery Form
DEFCON 501 (Edn 11/17)	Definitions And Interpretations
DEFCON 502 (Edn 05/17)	Specification Changes

OFFICIAL-SENSITIVE COMMERCIAL

DEFCON 503 (Edn 12/14)	Formal Amendments To Contract
DEFCON 507 (Edn 10/18)	Delivery
DEFCON 513 (Edn 11/16)	Value Added Tax
DEFCON 514 (Edn 08/15)	Material Breach
DEFCON 515 (Edn 02/17)	Bankruptcy and Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 02/17)	Transfer
DEFCON 520 (Edn 05/18)	Corrupt Gifts and Payment of Commission
DEFCON 522 (Edn 11/17)	Payment and Recovery of Sums Due
DEFCON 524 (Edn 10/98)	Rejection
DEFCON 525 (Edn 10/98)	Acceptance
DEFCON 526 (Edn 08/02)	Notices
DEFCON 527 (Edn 09/97)	Waiver
DEFCON 528 (Edn 07/17)	Import and Export Licences For the purposes of clause 16 of this DEFCON the period shall be 20 Business Days
DEFCON 529 (Edn 09/97) Or DEFCON 646 (Edn 10/98)	Law (English) Law and Jurisdiction (Foreign Suppliers)
DEFCON 530 (Edn 12/14)	Dispute Resolution (English Law). The Parties agree, in respect of clause 1 of DEFCON 530 to follow the procedures set out in Schedule L (Governance General) of this Contract
DEFCON 531 (Edn 11/14)	Disclosure of Information
DEFCON 532B (Edn 05/18)	Protection of Personal Data
DEFCON 534 (Edn 06/17)	Subcontracting and Prompt Payments
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

OFFICIAL-SENSITIVE COMMERCIAL

V2.0

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DEFCON 566 (Edn 03/18)	Change of Control of Contractor
DEFCON 601 (Edn 04/14)	Redundant Material
DEFCON 602A (Edn 12/17)	Quality Assurance (with deliverable Quality Plan)
DEFCON 604 (Edn 06/14)	Progress reports
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 609 (Edn 08/18)	Contractor's Records
DEFCON 611 (Edn 02/16)	Issued Property
DEFCON 612 (Edn 10/98)	Loss Of Or Damage To The Articles
DEFCON 619A (Edn 09/97)	Customs Duty Drawback
DEFCON 620 (Edn 05/17)	Contract Change Control Procedure
DEFCON 621A (Edn 06/97)	Transport (If The Authority Is Responsible For Transport)
DEFCON 624 (Edn 11/13)	Use Of Asbestos
DEFCON 625 (Edn 10/98)	Co-operation On Expiry Of Contract
DEFCON 627 (Edn 12/10)	Quality Assurance – Requirement for a Certificate of Conformity
DEFCON 632 (Edn 08/12)	Third Party Intellectual Property – Rights and Restrictions
DEFCON 637 (Edn 05/17)	Defect Investigation And Liability
DEFCON 642 (Edn 06/14)	Progress Meetings
DEFCON 643 (Edn 12/14)	Price Fixing (Non-qualifying contracts)
DEFCON 644 (Edn 07/18)	Marking Of Articles
DEFCON 647 (Edn 09/13)	Financial Management Information
DEFCON 656B (Edn 08/16)	Termination for Convenience
DEFCON 658 (Edn 10/17)	Cyber - Further to DEFCON 658 the Cyber Risk Level of the Contract is Very Low, as defined in Def Stan 05-138.
DEFCON 660 (Edn 12/15)	Official – Sensitive Security Requirements
DEFCON 661 (Edn 10/06)	War Risk Indemnity

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V2.0

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DEFCON 670 (Edn 02/17)	Tax Compliance
DEFCON 681 (Edn 06/02)	Decoupling Condition – Subcontracting with the Crown
DEFCON 684 (Edn 01/04)	Limitation Upon Claims in Respect of Aviation Products
DEFCON 691 (Edn 03/15)	Timber and Wood Derived Products
DEFCON 694 (Edn 07/18)	Accounting For The Property Of The Authority
DEFCON 697 (Edn 07/13)	Contractors On Deployed Operations
DEFCON 703 (Edn 08/13)	Intellectual Property Rights – Vesting in the Authority
DEFCON 811 (Edn 12/14)	Single Source: Profit and Loss Sharing on Firm / Fixed Price Contracts – Applicable to Items contained within Schedule H
DEFCON 812 (Edn 04/15)	Single Source Open Book – Applicable to Items contained within Schedule H
DEFCON 813 (Edn 12/14)	Single Source Contract Reports and Notifications – Applicable to Items contained within Schedule H
DEFCON 814 (Edn 12/14)	Single Source Confidentiality of Open Book and Price Reporting Information– Applicable to Items contained within Schedule H

1.2 DEFFORMS

(a) The DEFFORMS listed in this Condition 1.2 are applicable to this Contract and the Contractor is required to complete these where appropriate in a timely fashion.

10 (07/18)	Acceptance of Offer of Contract
68 (12/16)	Hazardous Articles, Materials or Substances Statement by the Contractor
111 (12/17)	Appendix – Addresses and Other Information
129A (02/16)	Application for Packaging Designs and Authorisation for Package Design Work.
129J (09/17)	The Use Of The Electronic Business Delivery Form
315 (02/98)	Contract Data Requirement
528 (12/17)	Import and Export Controls
532 (05/18)	Personal Data Particulars
691A (03/13)	Timber and Wood-Derived Products Supplied under the Contract–Data Requirements
701 (04/06)	Head Agreement for Licence Terms for Commercial Software Purchased By The Secretary Of State For Defence

PART B: SPECIAL CONDITIONS

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

- a. In addition to those detailed in DEFCON 501 the terms set out in Schedule Q (Definitions) shall apply.

2.2 Interpretation

- a. In this agreement except where the context otherwise requires:
 - i. the masculine includes the feminine and vice versa;
 - ii. the singular includes the plural and vice versa;
 - iii. any reference to any enactment, order, regulation, instrument, code, standard or other similar instrument shall be construed as a reference to the enactment, order, regulation, instrument (including any EU instrument), code, standard, or other similar instrument as amended, replaced, consolidated or re-enacted;
 - iv. a reference to a person includes firms, partnerships, associations, corporations, other bodies corporate or Crown Bodies and their successors and permitted assignees or transferees;
 - v. headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
 - vi. words "include", "includes", "including" and "included" shall be construed as illustrative and without limitation to the words which follow (or in the case of "included" precede) those words;
 - vii. any obligation not to do anything shall include an obligation not to suffer, permit or cause that thing to be done;
 - viii. a reference to GBP or £, shall mean pounds sterling;
 - ix. the words "day", "month" and "year" mean calendar day, calendar month and calendar year unless otherwise stated;
 - x. any references to time refer to GMT, unless otherwise stated.

3. PRECEDENCE

3.1 In the event of any conflict between the provisions of this Contract and/or between this Contract and any other document referred to in this Contract, then the following order of precedence shall apply:

- a. Special Conditions
- b. Condition 1.1 (DEFCONS)

- c. The Contract Statement of Requirement (Schedule A)
- d. Other Schedules (including all their attachments, appendices and annexes);
- e. Condition 1.2 (DEFFORMS)
- f. any other document referred to in this Contract.

4. DISCREPANCIES, ERRORS AND OMISSIONS

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

4.2 The Parties shall seek to agree such amendments as may be necessary to resolve such discrepancy, error or omission as soon as reasonably practical.

4.3 Where the Parties fail to reach agreement on the amendments necessary to resolve such discrepancy, error or omission within 10 Business Days of the notice under Condition 21.1 and either Party considers that the discrepancy, error or omission to be material to its rights or obligations under this Contract, then the matter shall be referred to the dispute resolution procedure in accordance with the dispute resolution procedure set out in Schedule L (Governance General).

5. ENTIRE AGREEMENT

5.1 This Contract sets out the entire agreement between the Parties to the Contract and supersedes all prior arrangements and understanding relating to its subject matter.

5.2 Notwithstanding Condition 5.1, nothing shall preclude either Party from bringing any claim or action against the other Party in the event of fraudulent misrepresentation.

6. CONTRACT PERIOD

6.1 This Contract and the rights and obligations of the Parties shall take effect on the [1st April 2020].

6.2 In respect of the outputs detailed within Schedule A (Statement of Requirements) the Contractor grants the Authority the irrevocable option to extend the Contract for 3 separate further consecutive periods of 3 years from the contract end date (i.e. 3+3+4 years). The Authority shall exercise this option, by giving written confirmation no later than [Insert time period as part of the tender response] and shall be in accordance with the same terms and conditions set out in this Contract.

7. CO-OPERATION AND PARTNERING

7.1 The Parties shall work together in an open and honest environment with the aim of achieving successful partnering and continuous improvement.

8. CONTRACTOR'S STATUS

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

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

8.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

PART C: OPERATIONS

9. IMPLEMENTATION

9.1 In accordance with the terms and conditions of this Contract, all the services (Core Services as described in Schedule A (Statement of Requirements), the Additional Services which the Authority may order under Schedule H (Pricing and Payment of Additional Services) and services related to the Exit of this agreement as described in Schedule P (Exit Management Plan)) and all the obligations to be performed in this Contract, shall begin after a period of Implementation as described in Schedule B (Implementation Plan) that will occur [insert time period as part of tender response].

PART D: OPERATIONS (CORE SERVICES)

10. BASELINE ASSUMPTIONS

10.1 The Parties acknowledge that the terms of this Contract have been agreed on the basis of the assumptions detailed in Schedule E (Baseline Assumptions).

10.2 Any actual or anticipated changes to any Baseline Assumptions detailed in Schedule E (Baseline Assumptions) during the Contract Period shall be notified in writing by the Authority to the Contractor as soon as reasonably practicable after the Authority becomes aware of any such changes or anticipated changes. Change due to the implementation of Surge shall be considered a change in Baseline Assumptions for the purposes of this Condition.

10.3 The effects of any Changes necessary as a consequence of a change in any of the Baseline Assumptions will be determined in accordance with Schedule F (Pricing and Payment for Core Services) and (where applicable) Schedule H (Pricing for Additional Services), provided always that:

- a. the Contractor shall only be entitled to propose any Changes where the Contractor has presented evidence to the satisfaction of the Authority that the changed Baseline Assumptions result in unavoidable additional costs which the Contractor has made all reasonable efforts to mitigate.
- b. the Contractor's entitlement to any Change (and/or any other relief and/or compensation) to this Contract as the result of any change to the Baseline Assumptions will be reduced to the extent (if any) that any act or omission of the Contractor was the cause of or contributed to the change in the Baseline Assumptions.

11. PROJECT AND PROGRAMME MANAGEMENT RECORDS AND REPORTING

11.1 The Contractor shall provide Project and Programme Management Information in accordance with the detailed arrangements set out in Schedule L (Governance General), Schedule N (Contractor Reporting and Data Deliverables) and elsewhere in the terms and conditions of this Contract.

12. SURGE

12.1 The Contractor shall continue to provide the Services at Schedule A (Statement of Requirements) as required:

- a. during any state of emergency (whether or not involving hostilities), periods of tension, transition to war and during hostilities; and
- b. during any period of Surge that is required by the Authority in the Contract Period.

12.2 In the circumstances of Condition 12.1, the Authority shall advise the Contractor of any changes or additions it requires to meet the increased level of support required and a Change to the provisions of the Contract shall be sought, provided that until such agreement or determination of any Change the Contractor shall continue to provide the Services.

12.3 During any period where the circumstances in Condition 12.1 prevail, the Authority shall not be entitled to apply deductions in accordance with Schedule G (Performance for Core Services) in respect of the period relating to the performance of that part of the Services affected by the Contractor's compliance with Condition 12.1 together with such further period of time as evidenced and is reasonably necessary in the view of the Authority to allow the Contractor fully to recommence its affected obligations.

13. RETENTION OF ARTICLES

13.1 In the event that this Contract is terminated all engines and associated equipment (the "Retained Articles") that have been provided by the Contractor in support of the Service shall be retained by the Authority until the Authority has put in place alternative provisions of the same or similar Services. The Authority shall pay a reasonable price, determined as if under single source pricing arrangements (DEFCONS 811 to 814) and subject to DEFCON 127 or 643, dependant on value, to compensate the Contractor in relation to the period for which the engines and associated equipment are retained.

14. TITLE AND RISK

14.1 The Authority shall throughout the Contract Period retain title to those assets that it has made available as GFA pursuant to Schedule D (GFA Obligations of the Authority).

14.2 Title to Parts and LRUs provided by the Contractor and incorporated in Repairable Articles during the course of the Services shall vest in the Authority at the time when the Parts or LRUs are incorporated in the Repairable Articles (as the case may be).

14.3 Title to Parts and LRUs which have been removed and replaced during the course of the Services will, if not already vested in the Contractor, pass to the Contractor once such Parts and LRUs are removed from the Repairable Article by or on behalf of the Contractor.

14.4 Risk of loss and damage to Articles that are returned to the Contractor pursuant to a Demand shall transfer to the Contractor at the time the item is handed back.

14.5 Risk of loss and damage to Articles shall transfer to the Authority at the time the Article is Handed-Back or delivered to the Authority at a MOB or by exception at Purple Gate.

14.6 Title and Risk to 1st and 2nd Line Parts provided by the Contractor will pass to the Authority at the time the Delivery Note 650s are signed by both Parties, prior to this the risk of loss or damage to the Articles remains with the Contractor.

15. ITEMS CONSIDERED BEYOND ECONOMIC REPAIR

15.1 The Contractor may, upon giving notice to the Authority, refer any Article submitted for repair under this Contract to the Authority for the determination of whether such Article is Beyond Economic Repair (BER). The Contractor's notice to the Authority will give details of the Article and why the Contractor believes that it is Beyond Economic Repair.

15.2 The Authority will, as soon as reasonably practicable following the Contractor's notice referred to in Condition 15.1, consider the Article which is the subject of the notice and determine whether such Article is Beyond Economic Repair.

15.3 If the Authority determines that the relevant Article is Beyond Economic Repair and should be repaired to meet the on-going fleet requirements, then the Contractor will repair the relevant Article as an Additional Service under Schedule H (Pricing for Additional Services)

15.4 If the Authority determines that the relevant Article is not Beyond Economic Repair, then the Contractor will repair and/or recondition such Repairable Article to the standards required by, and in accordance with, the provisions of this Contract.

15.5 Where the Contractor does not accept the determination of the Authority, then they may refer the matter for determination in accordance with the dispute resolution procedure set out in Schedule L (Governance General).

15.6 Items declared BER shall be declared as scrap to the Authority for disposal advice.

16. SAFETY AND QUALITY ASSURANCE

16.1 The Contractor shall deliver the Services and its obligations under the Contract and in accordance with the Safety and Quality Requirements set out in Schedule C (Quality, Safety, Regulatory Articles and DEFSTANS). The Contractor shall comply with ISO9000 (2015) and OHSAS18001. Third party assurance of compliance to ISO9000 (2015) and OHSAS18001 is a precondition for the rest of the contractual obligations set out at 16.2 to 16.11 below. The Contractor shall comply with MAA Regulations.

16.2 In addition to the DEFCON 609, the Contractor shall provide access to records, including sub-contractor records, for any purpose connected with this Contract. The Contractor shall provide and maintain evidence to support the engine safety case required by the Authority.

16.3 The Contractor shall comply with the Regulations set out in Schedule C (Quality, Safety, Regulatory Articles and DEFSTANS) by following:

- a. the acceptable means of compliance ("AMC") prescribed therein;

b. where there is more than one AMC, an AMC or AMCs agreed by the Contractor with the Regulator; or

c. other alternative means as may be agreed by the Contractor with the Regulator.

Modifications:

16.4 The Contractor shall, where they seek to initiate or incorporate any modification to the engine(s) or ancillaries, follow the processes as described in the MAA Regulatory Articles identified in the Contract.

16.5 The Contractor shall also submit a proposal to the Authority for incorporating any such modification into the engine fleet(s).

16.6 Where the proposal cannot be accepted by the Authority the Contractor shall consult and revise their proposal to address and accommodate the Authority's identified concerns.

16.7 Where the proposal is accepted by the Authority it shall be formally incorporated within the Contract by the Contract Change Process under DEFCON 503.

Safety and Environmental Management:

16.8 The Parties recognise and accept the Authority's roles and duties as Airworthiness Authority in relation to the Aircraft and the Engine and that the Contractor accepts an obligation to act in accordance with the Authority's instructions in this regard.

16.9 The Parties acknowledge the importance of the Authority maintaining unfettered leadership of matters in relation to the safe operation of the Aircraft Fleet in discharging its duties as set out above.

16.10 The Contractor shall maintain the Contractor safety management system as defined at Schedule A (Statement of Requirements) of the Contract. The Authority shall review the acceptability of the Contractor's safety management system from time to time as part of its continuing MAOS and DAOS audits.

16.11 The Contractor will advise the Authority of hazards that are processed through its hazard reporting procedure (known as the Notice To Operators procedure) where those Notice to Operators are relevant to the Authority's operation of Engines.

17. INTEGRATED LOGISTICS SUPPORT

17.1 The Contractor shall provide the Services under Item 1 of the Schedule of Requirements, and Item 2 when appropriate, to satisfy the requirements of Schedule M (Integrated Logistics Support).

PART E: OPERATIONS (ADDITIONAL SERVICES)

18. ADDITIONAL SERVICES

18.1 The Authority may procure Additional Services in accordance with the terms of Schedule H (Pricing for Additional Services).

PART F: OPERATIONS (EXIT)

19. EXIT MANAGEMENT PLAN

19.1 In the event of termination, or on expiry of the Contract, the provisions of Schedule P (Exit Management Plan) shall apply. The Contractor shall maintain, review and resubmit this plan annually for endorsement by the Authority. The quality of data and preparedness for exit or transition will be subject to a third-party audit, funded and managed by the Contractor.

20. TRANSFER OF ARTICLES ON EXPIRY OF THIS CONTRACT

20.1 The Contractor shall make available for collection at the Contractor's facility within 60 calendar days or as the Parties otherwise agree, of the expiry date or partial expiry date in the event of the end of service for Merlin or Apache aircraft being reached or Termination date of the Service of this Contract:

- a. all GFA Repairable Articles, under this Contract in whatever state; and
- b. all other Issued Property (other than GFA Repairable Articles) in accordance with DEFCON 611.

21. CONTINUING OBLIGATIONS

21.1 Save as otherwise expressly provided in this Contract:

- a. termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
- b. termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:
 - i. any provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination;
 - ii. any other provision of this Contract which is a continuing obligation or by implication is intended by the Parties to survive termination in order to give effect to its meaning.

PART G: SUPERVENING EVENTS

22. FORCE MAJEURE

22.1 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.

22.2 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.

22.3 Subject to Condition 22.4 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.

22.4. The maximum extension of time granted under this Condition shall be limited to 13 weeks 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.

23. DELAY

23.1 It is recognised by the parties that in the event that the Services which the Contractor is required under the Contract to supply to the Authority under Item 1 of the Schedule of Requirements, are not delivered at the required time as stated in the Contract, and in accordance with the Schedule M (Implementation Plan), the Authority may suffer loss and damage thereby.

23.2 In the event of such delay in commencing the service exceeding 20 Business Days beyond the agreed scheduled date, the Contractor shall be liable to pay the Authority by way of damages those necessary and reasonable costs of extending the previous service delivery by the total period of delay.

PART H: RELATIONSHIP MANAGEMENT, MONITORING AND SUPPLY CHAIN

24. EARNED VALUE MANAGEMENT

24.1 The Contractor shall operate and report against an Earned Value Management System (EVMS) in the form described in Schedule O (Earned Value Management System Reporting Requirements) to Contract. EVM system operation and reporting will be performance managed and payment may be deferred or withheld where performance does not meet defined criteria.

PART I: PRICING, PAYMENT & PERFORMANCE

25. PRICING AND PAYMENT

25.1 The Authority shall pay the Contractor for services provided under this Contract in accordance with Schedule F (Pricing and Payment for Core Services) and Schedule H (Pricing and Payment for Additional Services). Payment for Core Services will be subject to performance and failure to meet performance may result in deferred or withheld payments in accordance with Schedule G (Performance for Core Services).

26. KEY PERFORMANCE INDICATORS, PERFORMANCE MONITORING AND AUDIT

26.1 The Contractor shall:

- a. Comply with the provisions of Schedule G (Performance for Core Services) in respect of performance reporting and monitoring; including EVMS reporting (Schedule O).
- b. Deliver the Services in such a way as to meet or exceed the Required Performance Level for each Key Performance Indicator as set out in Schedule F (Performance for Core Services); and
- c. Where the Contractor fails to meet the Required Performance Level for any one or more KPIs, the Authority shall implement payment deductions in accordance with Schedule G (Performance for Core Services).

26.2 The Authority's Representative may at any time and with reasonable prior notice (of no less than 20 Business Days, or 5 Business Days for Urgent Quality Issues) undertake inspection of and/or audit the performance by the Contractor of any of the Services and/or the performance by the Contractor of any of the Contractor's other obligations under this Contract. The Contractor will cooperate in relation to any inspection and/or audit.

27. COMMERCIAL SALES EXPLOITATION

27.1 In the event of a prospective sale of Articles developed and funded under this Contract, the Contractor and the Authority shall determine the sums due in respect of such a sale in accordance with the specimen Commercial Exploitation Agreement at Schedule J (Specimen Commercial Exploitation Agreement) before authority for the sale to proceed is given.

28. ROYALTIES AND LICENCES

28.1 In the event that royalty payments or licences to manufacture are required to enable performance of the Contract, the Contractor shall be responsible for making whatever arrangements are necessary to obtain such agreements and pay any fees levied. The cost of any such fees or agreements shall be included within the Contract Price. The Authority will not become involved in any dispute or negotiation over the settling of royalty payments or manufacturing licences.

28.2 Where items delivered to the Authority include proprietary software (including third party proprietary software) which requires a licence or licences to enable the Authority to use the item, the licence or licences shall, where reasonably practicable, be in accordance with DEFFORM 701 (Head Agreement For Licence Terms For Commercial Software Purchased By the Secretary of State for Defence). Where the agreement of such a licence is not reasonably practicable the Contractor shall notify the Authority of this fact such that an alternative form of licence can be discussed and agreed, such agreement by the Authority not being unreasonably withheld.

28.3 Where the proprietor of any such software states that a head agreement already exists between that proprietor and the Authority they shall provide a copy of the said head agreement.

PART J: CHANGE

29. REPRESENTATIVES

References to Authority and Contractor:

29.1 Except as provided otherwise under this 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 Condition 29.

Contractor's Representatives:

29.2 The Contractor's Representatives shall be those persons detailed in the Parties' Representatives Contact List. The Contractor shall ensure that the Contractor's Representatives shall have the appropriate training, skills and delegated authority to fulfil the responsibilities of the Contractor's Representatives and to co-ordinate and ensure the Contractor's proper discharge of its obligations under this Contract.

Authority of Contractor's Representatives:

29.3 Each of the Contractor's Representatives shall have the 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 this Contract for which that Contractor's Representative is appointed, as being expressly authorised by the Contractor and the Authority shall not be required to determine whether any express authority has in fact been given.

Authority's Representatives:

29.4 The Authority's Representatives shall be those persons referenced in DEFFORM 111 and detailed in the Parties' Representatives Contact List.

Authority of Authority's Representatives:

29.5 Each of the Authority's Representatives shall have full authority to act on behalf of the Authority for those purposes for which that Authority's Representatives is appointed as referenced in DEFFORM 111. The Contractor and the Contractor's Representative shall be entitled to treat any act of the relevant Authority's Representative in connection with those aspects of this Contract for which that Authority's Representative is appointed as referenced in DEFFORM 111 as being expressly authorised by the Authority (save where the Authority has notified the Contractor in writing that such authority has been revoked) and the Contractor shall not be required to determine whether any express authority has in fact been given.

30. AUTHORISATION OF ADDITIONAL SERVICES

30.1 All quotations under this Contract shall be sent to the relevant Authority's Representative and breakdown of any prices agreed shall be recorded at Schedule I (Pricing Statements).

31. CONTRACT UP-ISSUE

31.1 In order to ensure that the clarity of the contractual agreement is preserved for the Parties, a complete and up to date version of the Contract shall be issued in whole by agreement with both Parties under any of the following circumstances:

- a. where the number of contract amendments is felt by either Party to be so excessive as to affect their ability to maintain clarity; and/or
- b. where any solution changes or additions result in the requirement to amend a large quantity of the Conditions or the structure of this Contract.

32. LEGISLATIVE RISK

32.1 The Contractor shall comply with all Legislation applicable to the provision of the Services and the Contractor's other obligations under this Contract.

32.2 If the Contractor believes a Discriminatory Legislation 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 Legislation Change;
- b. the date such Discriminatory Legislation Change will come into force and;
- c. any change which in the Contractor's opinion is necessary to the Services;

32.3 Following receipt of the notification identified in Condition 31.2, the Parties shall negotiate a Contract change to address the Discriminatory Legislation Change.

32.4 In the event of any dispute as to whether a Discriminatory Legislation Change has occurred, or where no appropriate Contract change can be implemented, the Parties shall submit to the dispute resolution procedure set out in DEFCON 530 and Schedule L (Governance General).

PART K: EMPLOYMENT

33. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) TUPE

33.1 The Parties acknowledge and agree that carrying out the Services in accordance with the terms of this Contract is not intended to constitute a relevant transfer for the purposes of TUPE and accordingly that such provisions are not intended to operate so as to terminate or transfer any of the contracts of employment of employees of the Authority.

33.2 The Authority therefore agrees subject to Condition 33.3, to indemnify, and keep the Contractor indemnified, against all Losses which the Contractor may suffer or incur arising out of or in connection with the employment, termination of employment or other obligations in respect of any employee or former employee of the Authority including for compensation for loss of office, redundancy, unfair dismissal, or breach of Contract in tort or otherwise, in respect of or arising out of his/her being or ceasing to be an employee of the Authority, or arising out of any failure by the Authority to provide information or engage in consultation.

33.3 The indemnity in Condition 33.2 will not apply to any such claims by any former employee of the Authority who the Contractor takes active steps to hire in connection with the Contract after the Effective Date of this Contract.

33.4 The Contractor therefore agrees, subject to Conditions 33.5 and 33.6, to indemnify and keep the Authority indemnified, against all Losses which the Authority may suffer or incur arising out of or in connection with the employment, termination of employment or other obligations in respect of any employee or former employee of the Contractor including for compensation for loss of office, redundancy, unfair dismissal, or breach of contract in tort or otherwise, in respect of or arising out of his/her being or ceasing to be an employee of the Contractor, or arising out of any failure by the Contractor to provide information or engage in consultation.

33.5 The indemnity in Condition 33.4 will not apply to any former employee of the Contractor who the Authority takes active steps to hire after the Effective Date of this Contract.

33.6 Schedule R (TUPE) contains the agreement between the Parties with respect to any Subsequent Relevant Transfer (as defined in Schedule R (TUPE)). The indemnities in Condition 33 will not apply in addition to the indemnities in Schedule R (TUPE).

PART L: TERMINATION

34. TERMINATION FOR CONTRACTOR DEFAULT

Poor Performance

34.1 Where the Authority considers the Contractor is failing to meet the KPI performance thresholds identified in Schedule G (Performance for Core Services) and in doing so incurring deductions under the arrangements in Schedule G (Performance for Core Services), or where the Contractor is failing to meet its obligations in respect of the Implementation Plan in accordance with Schedule B (Implementation Plan), or the provision of management information under Schedule N (Contractor Reporting and Data Deliverables), the Authority shall notify the Contractor in writing. The Contractor shall submit a Remediation Plan within 20 Business days of the Authority's written notice or provide advice that they will not submit a Remediation Plan within 5 Business days of such notice.

Remediation

34.2 Where a Remediation Plan has been provided by the Contractor, the Authority may within 20 Business days;

- a. accept the Remediation Plan in writing and require the Contractor to enact the plan;

b. request in writing that amendments are made to the Remediation Plan and specify the date by which the revised Remediation Plan must be provided to the Authority (and on receipt of such revised Remediation Plan this Condition 34.2 shall apply to the Remediation Plan as amended).

c. inform the Contractor in writing that it does not consider that the Remediation Plan or revised Remediation Plan will be sufficient to rectify the Contractor Default, in which case the Authority may terminate the Contract for material breach under the terms of DEFCON 514.

34.3 Where the Authority reasonably considers: The Rectification process has or will fail to return performance to the contracted levels or where a Remediation Plan has not been submitted, it may, at its sole discretion require a further Remediation Plan to be submitted or serve a termination notice under DEFCON 514 and the underperformance shall be deemed to be a material breach.

34.4 The Authority's rights under Conditions 34.1 to 34.3 are in addition to its rights under DEFCON 514 to terminate for material breach.

Contract Performance

34.5 For the purposes of this Contract the following shall be deemed a material breach under the terms of DEFCON 514 in addition to those causes as defined in Common Law or elsewhere in this Contract:

a. a rolling quarterly performance that sees the Contractor achieve Level 3 Performance Metric Category as at Schedule G (Performance for Core Services) for any KPI for 2 or more times in that quarter.

b. a rolling 6 month performance that sees the Contractor achieve Level 2 Performance Metric Category as at Schedule G (Performance for Core Services) for any KPI for 4 or more times in that 6 month period.

c. a rolling 12 month performance that sees the Contractor achieve Level 1 Performance Metric Category as at Schedule G (Performance for Core Services) for any KPI for 6 or more times in that 12 month period.

PART M: INTELLECTUAL PROPERTY RIGHTS

35. INTELLECTUAL PROPERTY RIGHTS

35.1 DEFCON 703 shall only apply to information generated from existing technical data, and where the work is carried out by an entity other than the owner of the Intellectual property in existing technical data.

PART N: OTHER

36. MONTREAL PROTOCOL CONTROLLED SUBSTANCES

36.1 The Contractor acknowledges that, as a signatory to the Montreal Protocol on substances that Deplete the Ozone Layer, the Authority is committed to the reduction and consumption of the substances controlled under the Montreal Protocol.

36.2 No controlled substances shall be introduced by the Contractor (or any of its Sub-Contractors) by any modifications or changes to the Articles or to any GFA without the prior consent of the Authority.

36.3 Should any modifications or changes be required to the Articles or to any GFA the Contractor shall (and shall procure that its Sub-Contractors shall) seek to eliminate any controlled substances, which are currently utilised in the manufacture and production of the Articles or any GFA, provided that the Contractor shall (and shall procure that its Sub-Contractors shall), prior to taking any action in respect of such elimination, seek the prior approval of the Authority to take such proposed action.