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CONTRACT NUMBER FLEET/00277
PROVISION OF AVIATION AND ENGINEERING FACILITIES AND
AIRCRAFT SUPPORT AT RNAS YEOVILTON, RNAS CULDROSE AND
VARIOUS SATELLITE STATIONS

TERMS AND CONDITIONS

PART 1 - PRELIMINARY

1. General Conditions

1.1 This Contract shall be subject to the following standard and mandatory Defence Terms and Conditions of Contract (DEFCONS) and Defence Forms (DEFFORMS)

DEFCON/DEFFORM (Number & Edition)	TITLE AND NOTES
DEFCON 5J (Edn 07/08)	Unique Identifiers Note; Clause 2 of the DEFCON shall not apply.
DEFCON 14 (Edn 11/05)	Inventions and Designs Crown Rights And Ownership of Patents and Registered Designs
DEFCON 19 (Edn 01/76)	Free User, Maintenance And Supply Of Drawings
DEFCON 21 (Edn 10/04)	Retention of Records
DEFCON 23 (Edn 08/09)	Special Jigs, Tooling And Test Equipment
DEFCON 68 (Edn 11/14)	Supply of Hazard Data For Articles, Materials and Substances
DEFCON 76 (Edn 12/06)	Contractor's Personnel at Government Establishments
DEFCON 90 (End 11/06)	Copyright
DEFCON 129 (End 03/14)	Packaging (For Articles Other Than Munitions)
DEFCON 129J (Edn 07/08)	The Use of the Use Of The Electronic Business Delivery Form
DEFCON 501 (Edn 12/14)	Definitions and Interpretations Additional definitions and interpretations specific to this Contract are set out in Clause 2 and Schedule 1 to this Contract
DEFCON 502 (Edn 06/14)	Specifications Changes
DEFCON 503 (Edn 12/14)	Formal Amendments To Contract
DEFCON 507 (Edn 10/98)	Delivery
DEFCON 509 (Edn 09/97)	Recovery of Sums Due
DEFCON 513 (Edn 06/10)	Value Added Tax
DEFCON 515 (Edn 10/04)	Bankruptcy and Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 11/12)	Transfer
DEFCON 520 (Edn 07/11)	Corrupt Gifts and Payments of Commission
DEFCON 521 (Edn 04/12)	Subcontracting to Supported Businesses
DEFCON 522 (Edn 07/99)	Payment
DEFCON 522J (Edn 05/03)	Payment under P2P

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DEFCON 523 (Edn 03/99)	Payment of Bills Using the Bankers Automated Clearing Service (BACS) System
DEFCON 524 (Edn 10/98)	Rejection

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DEFCON 525 (Edn 10/98)	Acceptance
	Note: DEFCON 524 (Rejection) and DEFCON 525 (Acceptance) The Contractor is reminded that under the provision of the Late Payment of Commercial Debts (Interest) Act, 1998, (DEFCON 522 refers), a payment made by the Authority to the Contractor for the supply of any article or service supplied against the Contract may not necessarily signify acceptance of the said article supplied against the Contract. The Authority reserves the right to invoke the terms of DEFCON 524 (Rejection) even if payment has already been made to the Contractor for the said article or service.
DEFCON 526 (Edn 08/02)	Notices
DEFCON 527 (Edn 09/97)	Waiver
DEFCON 528 (Edn 05/12)	Overseas Expenditure, Import and Export Licences Note: The Contractor's attention is drawn to Clause 1 of DEFCON 528 requiring notification of overseas expenditure. In this connection, the Contractor shall, within one month of acceptance of the Contract, notify the Contracts Branch of details of any overseas sub-contract or order he has placed, or intends to place, in aid of the contract. Details to be provided are: Contract No; Country in which sub-contract placed/to be placed; Name, Division and full postal address of sub-contractor; Value of sub-contract as applicable to main contract; Date placed/to be placed. If no overseas orders are to be placed, the Contractor shall advise the Contracts Branch to this effect in the same timescale.
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 532A (Edn 06/10)	Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)
DEFCON 534 (Edn 06/97)	Prompt Payment (Subcontracts)
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 07/14)	Change of Control of Contractor
DEFCON 601 (Edn 04/14)	Redundant Materiel
DEFCON 602A (Edn 12/06)	Deliverable Quality Plan
DEFCON 604 (Edn 06/14)	Progress Reports

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DEFCON 605 (Edn 06/14)	Financial Reports
DEFCON 606 (Edn 06/14)	Change And Configuration Control Procedure
DEFCON 607 (Edn05/08)	Radio Transmissions
DEFCON 609 (Edn 06/14)	Contractor's Records
DEFCON 611 (Edn 07/10)	Issued Property
DEFCON 614 (Edn 09/03)	Default
DEFCON 619A (Edn 09/97)	Customs Duty Drawback
DEFCON 620 (Edn 06/14)	Contract Change Control Procedure
DEFCON 621B (Edn 10/04)	Transport (If Contractor Responsible For Transport)
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 08/99)	Defect Investigation And Liability
DEFCON 638 (Edn 11/14)	Flights Liability And Indemnity
DEFCON 642 (Edn 06/14)	Progress Meetings
DEFCON 643 (Edn 12/14)	Price Fixing (Non-Qualifying Contracts) applicable to the Pricing of Change in accordance with Schedule 3
DEFCON 647 (Edn 09/13)	Financial Management Information
DEFCON 649 (Edn 07/99)	Vesting
DEFCON 656 (Edn 03/06)	Break
DEFCON 670 (Edn 07/14)	Tax Compliance
DEFCON 681 (Edn 06/02)	Decoupling Clause - Subcontracting With The Crown
DEFCON 684 (Edn 01/04)	Limitation Upon Claims In respect of Aviation Products
DEFCON 694 (Edn 02/12)	Accounting For Property of the Authority
DEFCON 703 (Edn 08/13)	Intellectual Property Rights – Vested in the Authority
DEFCON 812 (Edn 12/14)	Single Source Open Book
DEFFORM 10B (Edn 03/14)	Acceptance of Offer of Amendment to Contract
[DEFFORM 24 (Edn 10/14)]	[Specimen for Drafting Purposes [Deed of Guarantee and Indemnity given by a Parent Company in Respect of a Subsidiary] [If this is required by the Authority]
[DEFFORM 24A (Edn 10/14)]	[Bond given by a Bank as a Deed in respect of a Single Contract] [If this is required by the Authority]
DEFFORM 30 (Edn 02/14)	The Electronic Transactions Agreement
DEFFORM 43 (Edn 11/98)	Memorandum to Contractor on Disposal of Materials etc made surplus by the Termination, Amendment, or Reduction of Ministry of Defence Contracts
DEFFORM 68 (Edn 11/14)	Hazardous Articles, Deliverables, Materials or Substances Statement by the Contractor
DEFFORM 522A (Edn 09/99)	Relevant Form Details For DEFCON 522 Payment Condition

2. Definitions and Interpretations

2.1 In addition to the provisions of DEFCON 501 (Definitions and Interpretations) in this Contract (Including the Schedules), the additional words defined in Schedule 1 (Definitions and Interpretations) shall have the meanings specified and shall be construed and interpreted as shown.

3. Conditions Precedent

3.1 This Agreement shall not become effective until the following conditions have been satisfied:

3.1.1 the Contractor and any Employing Sub-Contractor enter into an Admission Agreement in the form set out in Annex A to Schedule 8 (Transfer Regulations); and

3.1.2 The Contractor and any Employing Sub-Contractor enter into a Parent Company Guarantee in the form set out in Annex B to Schedule 8A.

3.2 In the event of any conflict or inconsistency between the provisions of the body of this Contract and the schedules, or between any of the schedules, the conflict shall be resolved according to the following descending order of priority:

3.2.1 DEFCON 537 (Rights of Third Parties)

3.2.2 The body of this Contract and Schedule 1 (Definitions and Interpretations), subject to Part 14 (Expiry and Termination),

3.2.3 Schedule 4 Governance and Contract Management, Schedule 5 (Change and Change Management), Schedule 3 (Contract Price and Payment), Schedule 6 (Pricing and Change) and Schedule 10 (Performance Mechanism).

3.2.4 Schedule 2 (Statement of Requirements):

3.2.5 Remaining Schedules to Contract FLEET/00277 excluding Schedule 11 (Contractor Management Plans): and

3.2.6 Schedule 11 (Contractor Management Plans).

3.4 If a Party becomes aware of any inconsistency within or between the documents referred to in this Clause 3 such Party's representative shall notify the other's Representative immediately, and the Parties will seek to resolve such inconsistency in accordance with Schedule 4 (Governance and Contract Management Plan) and if either Party considers the inconsistency to be material then the matter shall be determined in accordance with DEFCON 530 (Dispute Resolution).

4. Duration

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

4.2 The Contractor assumes the responsibility for the delivery of the Services from the Service Commencement Date.

4.3 Except as set out in Clause 55 (Continuing Obligations), the Contract shall terminate on the earlier of:

4.3.1 The Expiry Date; or

4.3.2 The Termination Date

4.4 In the period between the Effective Date and the Service Commencement Date, the Contractor shall carry out the activities required to assume responsibility for the delivery of the Services in accordance with the Implementation Plan set out in Schedule 9 (Transition Plans).

4.5 Prior to Service Commencement Date, the Contractor shall implement the Implementation Plan set out in Schedule 9 (Transition Plans). Failure to comply with any aspect of the Implementation Plan must be brought to the attention of the Authority immediately. Persistent failure by the Contractor to complete activities by the dates specified in the Implementation Plan may lead the Authority to consider whether this would be to the detriment of the Service Commencement Date and ultimately the operational capability. Under such circumstances, the Authority reserves the right to consider all alternatives which may include invoking Default under DEFCON 614 (Default).

5. Warranties and Undertakings

5.1 The Contractor warrants and represents to the Authority that:

5.1.1 It is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

5.1.2 It has the corporate power to enter into and exercise its rights and perform its obligations under this Contract;

5.1.3 All action necessary on the part of this Contractor to authorise the execution the execution of, and the performance of, its obligations under this Contract has been taken;

5.1.4 no arrangements are in place that have, or may have, the result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any, or all, of the shares in the Contractor;

5.1.5 the obligations expressed to be assumed by the Contractor under this Contract area, or in the case of any such document executed after the Effective Date shall be, legal, valid, binding and enforceable to the extent permitted by Law;

5.1.6 The execution, delivery and performance by it of this Contract do not contravene any provision of:

5.1.6.1 Any existing Legislation binding on this Contractor including Legislation which has been enacted but is not yet in force;

5.1.6.2 The memorandum and articles of association of the Contractor;

5.1.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; or

5.1.6.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;

5.1.7 no claim is presently being assessed and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Contractor

(having made all due enquiry), pending or threatened against it or any its assets which shall, or might, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract:

5.1.8 it is not the subject of any other obligation, compliance with which shall, or is likely to, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

5.1.9 no Contractor Default has occurred which is continuing, nor has any event or circumstance occurred or arisen which, with the giving of notice, lapse of time, determination or satisfaction of any other clause may become a Contractor Default;

5.1.10 it is not in breach of any of its obligations under this Contract;

5.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

5.1.12 the copies of any Contract Documents which the Contractor has delivered or, when executed, shall deliver to the Authority's Representative, are or, as the case may be, shall be, true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of this Contract which would materially affect the interpretation or application of any such document.

5.1.13 in entering into this Contract it has not committed any Prohibited Act; and

5.1.14 there is not and nor has there been, any infringement or alleged infringement of any third party's Intellectual Property Rights in accordance with the Project by the Contractor, and the Authority relies upon such warranties and representations.

Contractor Undertakings

5.2 The Contractor covenants and undertakes with the Authority that for so long as this Contract remains in full force;

5.2.1 it will obtain, comply with the terms of, and do all that is necessary and within its powers to maintain in full force and effect all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Contract;

5.2.2 it shall give the Authority's Representative notice of any litigation, arbitration, administrative, adjudication or mediation proceedings before or of any court, arbitrator, administrator, adjudicator or mediator or other Authority dispute forum against itself or a Sub-Contractor which would adversely affect, to an extent which is Material in the context of the Project, the Contractor's ability to the rules of the dispute forum. Such notice shall be given within twenty (20) Business Days of the Contractor becoming aware such proceedings may be threatened or pending and immediately after the commencement.

5.2.3 it will not voluntarily enter into liquidation or a dissolution;

5.2.4 it shall not cease to be resident in the United Kingdom or sell, transfer, lend or dispose of (other than by way of security) in whole, or in part, its undertaking, business or trade outside the United Kingdom;

5.2.5 it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;

5.2.6 it shall not, without written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares in any company unless such company is involved in the provision of the Services;

5.2.7 it shall not, without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person, or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by this Contract;

5.2.8 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract; and

5.2.9 it shall comply with Establishment Orders.

Status of Contractor Warranties and Undertakings

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

Contractor's Due Diligence

5.4 The Contractor shall be deemed to have:

5.4.1 satisfied itself as to the assets to which it shall acquire rights and the nature and extent of the risks assumed by it under this Contract;

5.4.2 satisfied itself as to the feasibility and strategy of its Implementation Plan as set out in Schedule 9 (Transition Plans); and

5.4.3 without prejudice to DEFCON 531 (Disclosure of Information) satisfied itself as to the ownership of any Intellectual Property Rights and as to its rights to use Intellectual Property Rights to perform its obligations under this Contract.

Accuracy of Information

5.5 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 Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions.

6. Authority Disclosed Data

6.1 Subject to Clause 6.3, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority during the course of the procurement of this Contract (with the exception of any Authority Disclosed TUPE Data, to which the provisions of Clause 36 (Employee Transfer Arrangements)

shall apply and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

6.1.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority during the course of the procurement of this Contract; or

6.1.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract.

No Relief

6.2 Subject to Condition 6.3 the Contractor shall not in any way be relieved from any obligation under this Contract, nor shall be entitled to claim against the Authority on ground that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and it shall make its own enquiries as to the accuracy and adequacy of that information.

Fraudulent Statements

6.3 Nothing in this Condition 6 (Authority Disclosed Data) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements prior to the Effective Date and any amendments shall be in accordance with DEFCON 503.

7. Co-operation

7.1 Each Party agrees to co-operate, at its own cost, with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other Party's obligations under this Contract.

7.2 Each Party shall, in fulfilling their obligations under this Contract, take all reasonable steps to preserve the reputation and good name of the other Party.

7.3 The Authority undertakes to the Contractor that it shall not, except insofar as it is exercising any entitlement provided in this Contract, wilfully or materially impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority and of the Contractor and to any operation or activities carried out by the Authority on or at the Establishments for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions).

PART 2 – CONDUCT OF OPERATIONS

8. Scope of Contract

8.1 The Contractor shall provide the Services set out in Schedule 2, Statement of Requirements in accordance with the terms and conditions of this Contract from the Service Commencement Date.

8.2 In the event that the Authority identifies additional requirements or changes to the existing Services the Contractor may be requested to submit a proposal for consideration by the Authority in accordance with the provisions of Schedule 5 (Change and Change Management).

9. Provision of Services

9.1 The Contractor shall provide the Services in accordance with the terms of the Contract from the Service Commencement Date.

9.2 The Contractor undertakes to the Authority that:

9.2.1 it shall perform or procure that the Services and its obligations are performed:

9.2.1.1 in an efficient, effective and safe manner;

9.2.1.2 so as to satisfy Schedule 2 (Statement of Requirements);

9.2.1.3 in accordance with MAA policy, guidance and standards;

9.2.1.4 in accordance with Schedule 11 (Contractor Management Plans);

9.2.1.5 in compliance with Law;

9.2.1.6 in accordance with Good Industry Practice; and

9.2.1.7 using suitable goods and materials that are not Prohibited Materials.

9.2.2 it shall be responsible for all goods and materials brought on to the Establishments by or on behalf of the Contractor or any Sub-Contractor; and

9.2.3 it shall perform its obligations under this Contract in a manner that will enable the Authority to comply with the Law.

Authority Policies

9.3 In providing the Services, the Contractor shall;

9.3.1 comply with the Authority's policy on smoking in the workplace contained in JSP 375;

9.3.2 comply with the Authority's Health and Safety Handbook contained in JSAP 375;

9.3.3 comply with the Authority's policy on sustainable procurement contained in JSP 418;

9.3.4 take account of the Authority's initiatives relating to disabled persons, including the Authority's policy document entitled "Positive Disability;" as may be amended from time to time; and

9.3.5 have in place procedures to ensure, and use, reasonable endeavours to ensure, that employees of the Contractor or any Sub-Contractor do not consume, or become under the influence of, alcohol or narcotics while performing their obligations under this Contract of any Sub-Contract.

No Disruption

9.4 The Contractor shall provide the Services so as to co-operate with the Authority's operations on the Establishments and shall take reasonable care to ensure that it does not interfere with the operations or activities of the Authority or any Authority Contractor.

9.5 The Authority undertakes to the Contractor that it shall not, except as expressly permitted under this Contract, wilfully impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority in or at the Establishments for the purposes contemplated by this Contract or any other of the Authority's statutory duties or other functions).

Standards of Employees

9.6 The Contractor shall ensure that its employees and those employees employed by its Sub-Contractors delivering the Services shall;

9.6.1 subject to clause 9.7, possess all the necessary qualifications, licences, permits, skills and experience to discharge their responsibilities effectively, safely and in conformance with all relevant Law;

9.6.2 be trained in customer care and conduct themselves in a polite and orderly fashion conducive to working in a military environment and

9.6.3 meet and comply with the requirements of the Authority's security policies, regulations and instructions and shall be trained to conform with the required security standards as detailed in Part 12 (Security and Confidentiality).

9.7 In respect of employees transferred to the Contractor pursuant to TUPE and who do not have the necessary qualifications, licences, permits, skills and experience referred to in Clause 9.6.1 at the time of transfer to the Contractor, the Contractor shall take all necessary steps to ensure that the standards of such employees meet the standards required by Clause 9.6.1 as soon as reasonably practicable after the date on which such employees transferred to the Contractor and in any event no later than 3 months following the Service Commencement Date (or such other period as may be agreed between the Parties).

Disciplinary Procedures

9.8 The Contractor shall procure that there is set up and maintained by it and by all of its Sub-Contractors appropriate personnel policies and procedures covering discipline, grievance and performance in respect of all staff (the "**Relevant Procedures**"). The Contractor shall procure that the Relevant Procedures are published in written form and that copies of them and revisions and amendments to them are available to the Authority at each Establishment for inspection at all reasonable times. The Contractor shall amend the Relevant Procedures, or procure their amendment, from time to time in accordance with any objection raised by the Authority, acting reasonably.

9.9 The Authority's Representative may require the Contractor to apply the Relevant Procedures (or procure that they are applied) to any staff member if:

9.9.1 that staff member commits an act of misconduct (whether or not in the course of his duties); or

9.9.2 that staff member is incompetent or negligent,

If, in the reasonable opinion of the Authority's Representative, it would be conducive to the orderly and effective provision of any of the Services. The Contractor shall immediately comply with that requirement at its own risk and cost. For the avoidance of doubt, this clause does not limit the Contractor's obligation to comply with Clause 9.8.

List of Staff

9.10 Subject to Clause 48 (Security Requirements), the Contractor shall procure that the Authority's Representative is given details of all Proposed Staff (other than existing employees) and that the Authority shall have a right to make representations promptly to the Contractor in respect of any such Proposed Staff member's employment if:

9.10.1 the person has previously been engaged in the carrying out of this Contract and is considered by the Authority's Representative as a result to be unsatisfactory; or

9.10.2 there is any other good and substantial reason why the person should not be engaged in carrying out the Services, and the Contractor must have due regard to those representations (although the final decision whether to appoint Proposed Staff will be a matter for the Contractor).

Access

9.11 Save as required by Law, the Contractor shall procure that the Authority (including the Authority's Representative) has access in accordance with Clause 26 (Open Book Accounting and Audit) to all relevant information which demonstrates that the Contractor has complied with the provisions of this Clause 9 The Authority shall, in accordance with Clause 26 (Open Book Accounting and Audit), be entitled to conduct audits of the personnel and management policies of the Contractor and the Sub-Contractors relevant to the staff engaged in the provision of the Services.

Contractor Management Plans

9.12 The Contractor has prepared the Contractor Management Plans at Schedule 11 and the Contractor shall be solely responsible for:

9.12.1 any discrepancies, errors or omissions in the Contractor Management Plans; and

9.12.2 any failure of the Contractor Management Plans to comply with the Authority's Statement of Requirements, notwithstanding that the Contractor Management Plans have been seen or acknowledged by the Authority or approved or not objected to or commented on by the Authority.

10. Business Continuity

10.1 The Contractor shall comply with its obligations contained in the Business Continuity Plan at Schedule 12 (Business Continuity Plan).

11. Injuries, Disease and Dangerous Occurrences

11.1 Injuries, disease and dangerous occurrences which arise out of the performance of this Contract shall be reported by the Contractor immediately to the Designated Officer or his authorised representative and provide the following information:

11.1.1 name of the person(s) affected;

11.1.2 date, time and place of incident;

11.1.3 injuries, if any, and degree of severity;

11.1.4 places to which person(s) affected have been taken to;

11.1.5 brief description of events leading to the incident;

11.1.6 brief description of the extent of any damage caused to the Authority's or Contractor's property or equipment.

11.1.7 other such information as the Authority may reasonably request.

11.2 A written report of the incident shall be provided in accordance with JSP 551.

11.3 Following an injury, disease or dangerous occurrence, the Contractor shall make available, to the Officer in Charge of the an investigation, all relevant information and facilities, including access to his employees for the purpose of immediate and detailed investigation. If requested, the Contractor shall undertake an investigation and submit a written report.

11.4 The Contractor shall facilitate the attendance of such of his employees as may be invited by the Officer in Charge of an investigation to attend as witnesses at Boards of Inquiry or similar proceedings.

11.5 In the event of flight safety occurrences, the Contractor shall report all occurrences to the Authority and/or the Civil Aviation Authority (CAA) as appropriate.

PART 3 – IMPLEMENTATION PHASE

12. Implementation

12.1 During the Implementation Phase, the Contractor shall implement the Implementation Plan set out in Schedule 9 (Transition Plans) to enable it to ensure the smooth and seamless transfer of the activities from the Previous Contract to this Contract.

PART 4 – GOVERNANCE AND CONTRACT MANAGEMENT PROCESSES

13. Governance and Contract Management

13.1 The Parties shall comply with their obligations set out in Schedule 4 (Governance and Contract Management).

14. Contractor Management Plans

14.1 The Contractor shall (in accordance with the terms of this Contract and otherwise to the reasonable satisfaction of the Authority) implement the Contractor Management Plans set out in Schedule 11 (Contractor Management Plans).

PART 5 – LAND ISSUES

15. Hazardous Substances

15.1 The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the provision of Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at any Establishment and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.

15.2 The Contractor shall maintain a register of substances hazardous to health in relation to each task and shall ensure that a copy of each register is held at the Contractor's registered office and that a copy is given to the Authority's Registered Representative. The Authority's Representative shall notify the Contractor of any items which it or any Authority Contractor is using or storing at any Establishment and which it requires to be included in such register.

15.3 Prior to any delivery of any hazardous materials or equipment to an Establishment, the Contractor shall provide information to the Authority's Representative on such hazardous materials or equipment.

15.4 The Contractor shall comply with the Hazardous Waste Regulations 2005 and the List of Waste Regulations 2005 in respect of any Hazardous Waste produced directly by the Contractor in the delivery of this Contract. Where hazardous waste has been as a direct result of articles of Government Furnished Assets being supplied by the Authority then the hazardous waste will be disposed of in accordance with the relevant Establishment's Waste Management Plans.

15.5 In respect of explosive substances, the Control of Explosives Regulations and JSP 482 shall apply.

Land and Buildings

16.1 The Authority shall grant to the Contractor, and the Contractor shall take the Licence of the Licensed Premises on the Service Commencement Date.

17. Contractor's Conduct on Authority Establishments

17.1 Subject to Clause 17.2, the Contractor shall procure that any Sub-Contractor shall, in providing the Services at the Establishments;

17.1.1 not breach any provisions of the Authority's Title;

17.1.2 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Establishment or any part of it (save in accordance with the terms of the Contract);

17.1.3 observe and comply with any third party rights as notified by the Authority (including public rights) which may exist from time to time in respect of land comprising and adjoining the Establishments, and the Contractor shall ensure that the provision of Services is carried out in such a way as not to interfere with access to and use and occupation of public or public or private roads or footpaths by any person who is entitled to any such access, use or occupation;

17.1.4 not use or occupy the Establishments for any purpose other than the provision of Services;

17.1.5 not deposit or manufacture on the Establishments any materials which are not required for the provision of the Services;

17.1.6 not store materials or park vehicles in the immediate external vicinity of the boundaries of the Establishments other than for reasonable periods necessary for loading and unloading;

17.1.7 not discharge any oil, grease or deleterious, dangerous, poisonous explosive or radioactive matter from the Establishments into any rivers or any ditches or conduits on the Establishments and/or any adjoining property, and not permit or suffer the blockage of any such rivers, ditches and conduits by reason of anything done or omitted on the Establishments by the Contractor or Sub-Contractors, and shall comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority so far as such requirements relate to the provision of the Services;

17.1.8 procure that those parts of the Establishment which are from time to time occupied by the Contractor and/or Sub-Contractor for the purpose of the provision of the Services are maintained in a clean, orderly, safe and secure state; and

17.1.9 not without the written consent of the Authority's Contractor shall result in the Contractor being in breach of clause 17 unless such act or omission arises out of or in connection with the Authority or an Authority Contractor;

17.2 No act or omission of the Authority or an Authority Contractor shall result in the Contractor being in breach of clause 17 unless such act or omission arises out of or in connection with the Authority or an Authority Contractor;

17.2.1 acting on the instruction of the Contractor or a Sub-Contractor; and/or

17.2.2 failing to supervise and/or take reasonable care to supervise (where appropriate) the performance of any person engaged in the provision of the Services.

PART 6 – GOVERNMENT FURNISHED ASSETS

18. Government Furnished Assets

18.1 The Authority shall make available to the Contractor free of charge the Government Furnished Assets on the dates, locations and for the periods specified in Schedule 2 (Statement of Requirements). In addition to the provisions of DEFCON 611 (Issued Property) the provisions of Schedule 18 (Government Furnished Assets) shall apply.

18.2 The Contractor shall not create or grant any form of benefit or interest in Government Furnished Assets whether by way of security or otherwise.

18.3 Where any tangible property of the Authority, including Government Furnished Assets but excluding documents and intangible information, is issued by the Authority in aid of the Contract, the Contractor shall include that property of the Authority in their Public Store Account and it shall be treated in accordance with DEFSTAN 05-99 (Issue 3). The provisions of DEFCON 694 (Accounting for the Property of the Authority) shall apply.

Government Furnished Assets Surplus to Requirement/Disposal

18.4 The Contractor shall notify the Authority of buildings, vehicles and aircraft etc which are provided as Government Furnished Assets that are surplus to requirements and await disposal instructions from the Authority.

18.5 Within seven working days of an aircraft being determined as surplus to the Contract requirements, the Contractor shall pass a written report to the Designated Officer. Aircraft supplied for a specific commitment are not to be retained against a proposed increase in, or alteration to, the aircraft Establishment for another commitment without written authority of the Designated Officer.

18.6 Except for essential test flying prior to despatch aircraft reported as surplus under this condition shall not be flown.

18.7 The Contractor shall ensure that prior to authorised disposal or return to the Authority, Government Furnished Assets aircraft are inspected and outstanding maintenance work is completed in accordance with Schedule 2 (Statement of Requirements) or change authorised by the Designated Officer.

19. Contractor Furnished Assets

19.1 Any assets required which are not specified as Government Furnished Assets in Schedule 2 (Statement of Requirements) shall be the Contractor Furnished Assets, unless stated to the contrary.

PART 7 – AUDIT, REVIEW AND CONTINUOUS IMPROVEMENT

20. Performance Management

20.1 The Contractor shall procure that the relevant provisions of Schedule 10 (Performance Mechanism) are flowed down to all Sub-Contractors and any other persons for whom it is responsible to enable the Contractor, its Sub-Contractor and any other persons for whom it is responsible to comply with the provisions of Schedule 10 (Performance Mechanism).

20.2 The Contractor shall provide the Authority's Representative with relevant particulars if any aspect of its performance which fail to meet the requirements of this Contract (unless notified in writing by the Authority) in accordance with Schedule 10 (Performance Mechanism).

20.3 The Authority may at all reasonable times, observe, inspect and satisfy itself as to the adequacy of the Contractor's monitoring of performance pursuant to Schedule 10 (Performance Mechanism) (including carrying out sample checks and any other auditing required).

21. Financial Reports

21.1 Further to the provisions of DEFCON 605 (Financial Reports) the Contractor shall submit to the Authority Financial Reports in the form set out in Schedule 13 (Financial Reports) by the dates required.

21.2 The submission by the Contractor and receipt by the Authority of the Financial Reports shall not prejudice any of the rights of the Authority of the Contractor under this Contract.

22. Contract Review

22.1 In the three (3) months following the mid point of the Contract, namely commencing 1 July 2018 the Authority shall conduct a Review of the Contract and Contractor performance during the initial period of the Contract.

22.2 The Review shall include, without limitation, a Continuous Improvement Review, a Value for Money Review and, if appropriate, a Benchmarking Exercise and a review of the Contractor's performance against the criteria set out in Schedule 10 (Performance Mechanism).

In the event that the VFM and Benchmarking Reviews demonstrate that the Contract Price does not represent VFM then the provisions of clause 25.8 shall apply.

23. Continuous Improvement

23.1 The Contractor shall, for the Contract Period, establish and implement a programme of measures which are designed to secure continuous improvement at no risk to or reduction in the quality of the Services delivered by the Contractor and measured under this Contract (the "**Continuous Improvement Programme**") whilst achieving efficiencies as set out in Schedule 14 (Continuous Improvement Plan).

23.2. The Continuous Improvement Programme, under which the Contractor shall submit substantive and deliverable proposals and recommendations, shall include, but not be limited to:

23.2.1 the systematic assessment and implementation of proposals designed to secure continuous improvement;

23.2.2 the systematic review of the Contractor's internal targets and revision to ensure consistency with contractual performance;

23.2.3 the development of proposals in response to Schedule 2.17 of the Statement of Requirement.

23.2.4 the systematic gathering, review and use of feedback;

23.2.5 the establishment of a baseline to measure the effectiveness of the Contractor's Continuous Improvement Performance and Value for Money.

23.2.6 the early identification of problems and opportunities, and measures to address them:

23.2.7 effective business management;

23.2.8 effective use of resources;

23.2.9 appropriate incentivisation; and

23.2.10 the development of training of Contractor Employees.

23.3 The Contractor shall report on the Continuous Improvement Programme in accordance with Schedule 14 (Continuous Improvement Plan).

23.4. The Authority's Representative may audit the Contractor's Continuous Improvement Programme (including the reports referred to in clause 23) at approximate intervals of 6 months and may carry out other periodic monitoring, spot checks and auditing of the Contractor's Continuous Improvement Programme as deemed reasonable between the Parties (the "**Continuous Improvement Review**").

23.5. The Contractor's success in delivering continuous improvement shall be judged as part of the Contract Review and the appropriate Performance Indicators contained in Schedule 10 (Performance Mechanism).

24. Value for Money Review

24.1 The Contractor agrees that the Authority needs to be satisfied that the Contract Price represents continuing good Value for Money for the provision of the Services throughout the Contract Period and understands that the Authority will conduct a review of the Value for Money as part of the Contract Review (a "**Value for Money Review**").

24.2 The right of the Authority to conduct the Value for Money Review and the obligations of the Contractor under this clause 24.1 do not, in any way, alter the obligation on the Contractor to provide financial reports and data in respect of the Contract Price and DEFCON 802. The Authority will conduct the Value for Money Review in accordance with this clause 24.1 in consultation with, and with the participation of, the Contractor. To this end in accordance with the provisions of Clause 26 (Open Book Accounting and Audit) the Contractor agrees:

24.2.1 to assist the Authority as the Authority requires to implement this Clause 24.1, and provide access to its documents, records and accounts.

24.2.2 to provide, and shall ensure its Sub-Contractors provide, such information as may be requested by the Authority, and

24.2.3 that where the Authority reasonably believes that the Contractor is not offering Value for Money, the provisions of clause 25 (Benchmarking) will be used to test the Contractor's service cost and output.

25. Benchmarking

25.1 The Contractor agrees that where the Authority is not satisfied with the outcome of the Value for Money Review following the Contract Review in clause 24.1, it may, at its reasonable discretion, conduct a single Benchmarking Exercise on a date that the Authority shall, at its sole direction, decide upon.

25.2 In the event that the Authority requires a Benchmarking Exercise to be conducted in accordance with clause 25.1 the Contractor shall (either itself or acting through a Sub-Contractor) undertake a Benchmarking Exercise in accordance with this clause 25, the cost of which being shared equally between the Authority and the Contractor. The Contract and Contract Price shall be amended to reflect the cost of the Benchmarking Exercise in accordance with Schedules 5 (Change and Change Management) and 6 (Pricing of Change).

25.3 The Benchmarking Exercise will be undertaken in respect of the Benchmarking Services and will be undertaken to ascertain the Value for Money, relative quality and competitiveness of the Benchmarked Services provided by the Contractor. The Benchmarking Exercise will be undertaken in good faith by both Parties and on the basis of an objective and like for like comparison by comparing the relevant equivalent price of providing the Benchmarked Services to the standard required by this Contract with the standards and price of services which are equivalent to those of the Benchmarked Services.

25.4 In performing the Benchmarking Exercise, the Contractor shall;

25.4.1 propose to the Authority's agreement, the process for implementing the Benchmarking Exercise including, without limitation, the persons who shall take part in the Benchmarking Exercise (including other service providers, benchmarking clubs and independent agencies as may be agreed);

25.4.2 collect qualitative information on Good Industry Practice to complement the quantitative measures by means of benchmark interviews and

25.4.3 prepare a benchmarking report which compares a basket of key standards, specifications, prices, performance indicators or processes and contractual terms in respect of the Benchmarked Services with the equivalent prevailing market or a representative sample of services, such report to be delivered to the Authority no later than 3 months after completion of the Benchmarking Exercise.

25.5 Where this Clause 25 requires any matter to be agreed by the Parties or, failing such agreement, to be determined under DEFCON 530 (Dispute Resolution), the following matters shall be taken into account of:

25.5.1 the service providers selected to take part in the Benchmarking Exercise shall have the same degree of skill, experience, resources and financial standing as the Contractor and be independent of the Contractor and its Parent Company;

25.5.2 all of the Benchmarking Services shall be benchmarked together, and a person selected to take part in the Benchmarking Exercise shall be required to provide appropriate warranties and supporting evidence (where appropriate) in respect of the information provided as part of the Benchmarking Exercise.

25.5.3 the contractual obligations, rights and liabilities in respect of the Benchmarked Services shall be the same as those applicable to the Benchmarked Services under this Contract as are in force at the date of the Benchmarking Exercise; and

25.5.4 when comparing the relevant estimated equivalent price for the Benchmarked services proposed by any other person with the relevant price being provided by the Contractor as at the date of the Benchmarking Exercise, the comparison shall:

25.5.4.1 reflect the matters referred to in this Clause 25; and

25.5.4.2 reflect any factors inherent in a change of the person providing the Benchmarked Services including, without limitation, mobilisation prices.

25.6. The Contractor shall make the results of the Benchmarking Exercise available to the Authority on an open book basis in accordance with the provisions of clause 26 (Open Book Accounting and Audit).

25.7 If the results of the Benchmarking Exercise indicate that there is a price difference between the Contract Price attributable to the Benchmarked Services and the Benchmarking Price of five (5) per cent or less in aggregate, then the Contractor shall continue to provide the Benchmarked Services and there shall be no adjustment to the Contract Price.

25.8 If the results of the Benchmarking Exercise indicate that there is a price difference between the Contract Price attributable to the Benchmarked Services and the Benchmarking Price of more than 5 per cent, the Authority has the right to:

25.8.1 pay for the Services at the pre-Benchmarking Price and allow this Contract to terminate on the Expiry Date in accordance with clause 50 (Termination on Expiry of Contract Period); or

25.8.2 elect to terminate any of the tasks reviewed as part of the Benchmarking Exercise in accordance with Schedule 4 (Change and Change Management, (Break of Task)).

26. Open Book Accounting and Audit

26.1 The Contractor shall operate Open Book Accounting in relation to this Contract as set out in this Clause 26. The Contractor shall;

26.1.1 deliver to the Authority at the half yearly interval, a summary of costs and revenues relating to this Contract;

26.1.2 provide to the Authority the annual accounting and audit of its costs and revenues relating to this Contract; and

26.1.3 provide access to the Authority, on request, to the source data (including computerised records and data) of any information reported in this Clause 26.

26.2 Any agreed adjustments to this Contract Price arising from the authorised tasking of the Contractor will be made in accordance with Schedule 3 (Contract Price and Payment).

26.3 The Authority's Open Book Accounting rights shall extend to the Contractor's Parent Company and group companies only where such companies are single sourced Sub-Contractors to the Contractor under this Contract and only with respect to such accounting information directly related to such activities.

26.4 The Contractor shall ensure that all Sub-Contracts placed on a single source basis contain provisions for the Authority to have equivalent audit rights to those set out in this Clause 26 only with respect to accounting information directly related to such Sub-Contract activities.

26.5 The Contractor shall keep, or shall cause to be kept, full financial records and supporting information of all relevant Services provided pursuant to this Contract, including, but not limited to, materials and services provided, timesheet records, Sub-Contracts utilised and charges levied.

26.6 The Contractor shall grant to the Authority, the statutory auditors of the Authority and their respective authorised agents (provided an appropriate confidentiality agreement has been concluded) the right of reasonable access to the financial books and records of the Contractor, and shall provide all reasonable assistance at all times during the Contract Period for the purposes of carrying out a financial audit of the Contractor's financial books and records.

26.7 The Authority warrants to the Contractor that it, and its authorised agents and representatives shall respect and protect the confidentiality of all data and records accessed during any audit carried out pursuant to this clause 26. All such data and records shall be treated as Confidential Information for the purposes of DEFCON 531 (Disclosure of Information).

26.8 The Authority shall from time to time notify the Contractor of programmes of audits.

26.9 The appointed auditors may produce reports to the Authority indicating areas of non-compliance with this Contract and make recommendations.

26.10 Following each audit, the Authority shall produce a report of the audit to the Contractor indicating any areas of financial non-compliance with this Contract which the Contractor is required to rectify in accordance with this clause 26.

26.11 The Authority shall ensure that the Contractor has the opportunity to review the factual issues relevant to the Contractor which are raised by the report in Clause 26.10 and to comment upon the recommendations and agree with the Authority the recommendations that are to be implemented.

26.12 The Contractor shall, at its own expense, implement, within the timescales agreed by the Parties, any changes necessary to remedy areas of non-compliance with any of the terms in this Contract as identified by the Authority or its representatives, where such non-compliance results from a failure or inaction on the part of the Contractor.

26.13 The Contractor shall provide, with reasonable timescales, evidence, either documentary or demonstrative, as required by the Authority, and shall, if required, provide access to the representatives of the Authority, to permit the Authority or its representatives, or the NAO, to monitor and confirm the implementation of such agreed changes.

26.14 The Authority and the Contractor shall implement audit recommendations in accordance with the timescale and procedures agreed by the Parties.

26.15 For the purpose of examination of the Authority's financial records, any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment of the efficiency or effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents which includes computerised records and data directly relating to this Contract as he 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 he considers necessary.

27. Contractor's Records

27.1 The Contractor shall maintain such records as are specified in the Contract and make them available to the Authority as the Authority may reasonably require when requested upon reasonable notice.

27.2 Subject to the provisions of DEFCON 531 (Disclosure of Information) and Part 11 (Intellectual Property) the Contractor shall permit all records referred to in this clause 27 to be examined and if necessary copied, by or on behalf of the Authority.

PART 8 – CONTRACT PRICE, BILLING AND PAYMENT

28. Contract Price

28.1 The Authority will pay to the Contractor the Contract Price in accordance with the terms of Schedule 3 (Contract Price and Payment). Pricing of changes and amendments to this Contract shall be calculated in accordance with the provisions of Schedule 5 (Change and Change Management) and Schedule 6 (Pricing of Change).

28.2 The Parties agree to the principle of Presumed Inclusion, whereby:

28.2.1 all activities, task, materials and services necessary to deliver the Services are deemed to be included within the Contract and are the responsibility of the Contractor. Accordingly, no Contract amendment shall be accepted by the Authority other than in respect of an activity, task, material or service expressly excluded from the Contract or, stated as being an obligation of the Authority or a third party.

28.2.2 the activities, tasks, materials or services expressly excluded from the Contract or stated as being an obligation of the Authority or a third party shall be those contained within the Contract and neither Party may cite any other earlier document in aid of seeking a change to the Contract.

28.2.3 in the event that there is a dispute as to whether an activity, task, material or service is necessary to deliver the Services then with Party may refer the matter to be determined under DEFCON 530 (Dispute Resolution).

28.2.4 irrespective of whether either Party elect to refer a matter in respect of Presumed Inclusion to the Dispute Resolution procedure, the Contractor shall perform any task, activity, service or provision of the material necessary for the performance of the Services without delay. The Contractor shall not be required to undertake any task or activity which is not necessary for the performance of the Services; and

28.2.5 in respect of the Contract Price, the principle of Presumed Inclusion shall be interpreted that all costs associated with the performance of the Services and the Contractor's obligations under this Contract are deemed to be included in the Contract Price unless expressly stated otherwise within the Contract. Accordingly, no amendment to the Contract Price shall be made other than in relation to an express exclusion from the Contract or an obligation of the Authority or third Party and neither Party may cite any other earlier document in aid of seeking a change to the Contract Price.

28.3 Subject to this clause 28 and clause 49 (Change and Change Management), unless expressly stated to the contrary in this Contract, the Contract Price includes the costs of delivery of the Services as set out in Schedule 2 (Statement of Requirements) and the performance of the Contractor's obligations under this Contract.

29. Billing and Payment

29.1 The Authority shall pay the Contractor the Contract Price in accordance with the terms of this Contract, associated payment DEFCONs and Schedule 3 (Contract Price and Payment).

30. Disputed Amounts

30.1 The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract ("Disputed Amount") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, subject to notifying the Contractor of

such belief (and the reasons for it) on or before the day on which the Disputed Amount would (but for this Clause 30.1) otherwise fall due.

30.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.

30.3 Within five (5) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to clause 30.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement, If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit the Authority shall be entitled:

30.3.1 to retain on a temporary basis any amounts withheld pursuant to clause 30.1; until such time as performance has occurred, and

30.3.2 to reclaim from the Contractor the amount of any over payment which may have been made to the Contractor, together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over payment was made until that amount has been paid in full and whether before or after judgement.

30.4 If the Contractor responds pursuant to clause 30.4 that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause 30.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matters or matters in question shall be determined under DEFCON 530 (Dispute Resolution).

30.5 If the determination of any dispute conducted pursuant to clause 30.4 shows that:

30.5.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or

30.5.2 the Contractor has claimed under clause 29 (Billing and Payment) any amount which it was not entitled to be paid, the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full whether before or after judgement.

PART 9 – INDEMNITIES AND INSURANCE

31. Indemnities

31.1 Further to the provisions of DEFCON 76 (Contractor's Personnel at Government Establishments) the Contractor shall, subject to clause 31.2 be responsible for, and shall release and indemnify the Authority, its employees, agents and Authority Contractors on demand from and against all liability for:

31.1.1 death or personal injury

31.1.2 loss or damage to Authority Property;

31.1.3 breach of statutory duty; and

31.1.4 actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis), which may arise out of, or in consequence of, a breach of this Contract, a tortious act or omission, a breach of statutory duty, fraud or wilful misconduct, or the performance or non-performance of its obligations under this Contract by the Contractor, a Sub-Contractor, their employees or agents.

Limits on Indemnity

31.2 The Contractor shall not be responsible or be obliged to indemnify the Authority for:

31.2.1 any of the matters referred to in clauses 31.1.1 to 31.1.4 above which arises as a direct result of the Contractor acting on the instruction of the Authority; or

31.2.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, its employees, agents or Authority Contractors or by the breach by the Authority of its obligations under this Contract.

31.3 Any indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

Conduct of Indemnity Claims

31.4 If any claim is subject to an indemnity from either Party to the other:

31.4.1 the Party wishing to make a claim (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") of the relevant claim as soon as reasonably practicable, giving full particulars of the claim.

31.4.2 the Indemnified Party shall take all reasonable steps (and, if the Contractor is the Indemnified Party, it shall ensure that the Sub-Contractors shall take all reasonable steps) to minimise and mitigate any loss for which the indemnifying Party is liable under this Contract; and

31.4.3 if the claim relates to an action by a third party against the Indemnified Party the Indemnifying Party may, unless the Contractor is the Indemnifying Party and the Authority notifies the Contractor that the Authority is refusing to allow the Contractor to have conduct of the claim on grounds of national security, at its own expense (and with the assistance and co-operation of the Indemnified Party) have conduct of such claim, including its settlement, and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim.

Conduct of Indemnity Claims – Indemnifying Party's Obligations

31.5 If the indemnifying Party wishes to have conduct of the claim it shall:

31.5.1 give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party;

31.5.2 keep the Indemnified Party reasonably informed of the conduct of the claim;

31.5.3 consult with the Indemnified Party to the extent reasonably practicable;

31.5.4 not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnified Party's consent, not to be unreasonably withheld or delayed);

31.5.5 do nothing which could prejudice the defence of any such claim; and

31.5.6 not bring the name of the Indemnified Party into disrepute.

Repayment of Subsequently Recovered Amounts to Indemnifying Party

31.6 If the Indemnifying Party pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnifying, the Indemnified Party shall immediately repay to the Indemnifying Party whichever is the issuer of:

31.6.1 an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnified Party in recovering the same; and

31.6.2 the amount paid to the Indemnified Party by the Indemnifying Party in respect of the claim under the relevant indemnity, provided that;

31.6.2.1 there shall be no obligation on the Indemnified Party to pursue such recovery; and

31.6.2.2 the Indemnifying Party shall be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnified Party exceeds any loss sustained by the Indemnified Party.

Limitations on Claims

31.7 Neither Party will be liable to the other Party for:

31.7.1 any indirect, special or consequential loss or damage; or

31.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

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

32. Insurance

32.1 Without prejudice to its obligations to the Authority under this Contract including its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 7 (Required Insurances) take out and maintain, or procure the taking out and maintenance of, the insurances as set out in Schedule 7 (Required Insurances) and any other insurances as may be required by applicable law (together the "Required Insurances"). The Contractor shall ensure that the Required Insurances are effective in each case no later than the date on which the relevant risk commences.

32.2 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.

32.3 Where specified in Schedule 7 (Required Insurances) the Contractor shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause, 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 the provision of the Services under this Contract.

32.4 Neither Party shall 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.

32.5 Where the Contractor has failed to purchase any of the Required Insurances or maintain any of the Required Insurances in full force and effect, 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. The Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

32.6 The Contractor shall, from the date of this Contract and within fifteen (15) days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that relevant Required Insurances are in full force and effect and meet the requirements of this clause 32 and Schedule 7 (Required Insurances). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this clause 32 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.

32.7 Where the minimum limit of indemnity required in relation to any of the Required Insurances is specified as being "in the aggregate":

32.7.1 if and to the extent that the level of cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by the insurers, the Contractor shall ensure that the cover is reinstated to maintain, at all times the minimum limit of indemnity specified for claims relating to this Contract; and

32.7.2 if the Contractor is or has reason to believe that it will be unable to ensure that cover is reinstated to maintain at all times the minimum limit of indemnity specified it shall submit to the Authority immediately full details the policy concerned and shall submit forthwith its proposed solution for maintaining the minimum limit of indemnity specified.

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

32.9 The Contractor shall promptly notify to insurers any matter arising from, or in relation to 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 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.

32.10 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) days after any insurance claim in excess of one hundred thousand pounds (£100,000) relating to this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

32.11 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium, including any increase in premium.

32.12 Where any Required Insurances referred to in Schedule 7 (Required Insurances) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess of 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.

32.13 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.

PART 10 – EMPLOYMENT MATTERS

33. Non-Solicitation

33.1 Subject to clause 33.2 the Contractor undertakes that during the term of this Contract, and for the period of six (6) months after the Expiry Date, or, if this Contract is terminated before the Expiry Date, the Termination Date, it shall not directly solicit or attempt to directly solicit services from any employees of the Authority or entice or attempt to entice any employees of the Authority away from the Authority.

33.2 Where the employee of the Authority responds on its own account to an advertisement made by the Contractor to the wider public, such response shall not be construed as the Contractor directly soliciting or attempting to directly solicit services from any employee of the Authority or enticing or attempting to entice any employees away from the Authority.

33.3 In the event that the Contractor breaches clause 33.1, it shall pay on demand liquidated damages to the Authority, the amount of liquidated damages being calculated in accordance with clause 33.4.

33.4 The amount of liquidated damages payable by the Contractor to the Authority pursuant to clause 33.3 shall be a sum equal to the gross salary of the relevant employee of the Authority for the twelve (12) month period (or, if the employee of the Authority was employed for a period of less than twelve (12) months, the gross salary for such lesser period) prior to the breach of clause 33.1 by the Contractor. The Parties agree that the liquidated damages referred to in this clause 33.4 are a genuine pre-estimate of loss that the Authority may suffer as a result of such breach.

34. Employee Relations

34.1 During the Implementation Phase, the Contractor shall engage and consult with the Authority and Previous Contractor employee and any other party affected by Schedule 9 (Transfer Regulations) and their relevant representatives in accordance with the Implementation Plan contained in Schedule 9 (Transition Plans).

35. Use of Authority Personnel

35.1 During the Contract Period, subject to clause 35.3 below the Authority may make available military manpower to the Contractor.

35.2 The Contractor shall be responsible for the management of the Authority military manpower in order to provide the Services in accordance with the terms of this Contract.

35.3 The Authority shall have the right at any time upon giving the Contractor such reasonable notice as may be appropriate in all the circumstances to require the military manpower for duties unconnected with this Contract.

35.4 The Authority shall, where possible, provide replacement military manpower to replace those which it has removed pursuant to clause 35.3 above. Where the Authority is unable to provide any replacements, the Contractor shall be responsible for recruiting additional staff to ensure that it can meet the requirements of this Contract in accordance with Schedule 5 (Change and Change Management).

35.5 Where the Contractor is required to recruit staff pursuant to clause 35.4 above, the Parties shall agree the Contractor Management Plans for replacing the military manpower and any associated costs.

35.6 The Authority shall not be liable to the Contractor for the acts or omissions of the military manpower to the extent that the military manpower acts on the instructions of the Contractor.

36. Employee Transfer Arrangements

[Depending on core or core + MT solution]

36.1 The provisions of Schedule 8A (Transfer Regulations Part 1 - Employee Transfer Arrangements on Entry) shall apply to the Contract.

36.2 The provision of Schedule 8A (Transfer Regulations Part 2 - Staff Transfer Arrangements on Exit) shall apply to the Contract.

or

36.1. The provisions of Schedule 8B (Transfer Regulations Part 1 – Employee Transfer Arrangements on Entry) shall apply to the Contract.

36.2 The provisions of Schedule 8B (Transfer Regulations Part 2 – Staff Transfer Arrangements on Exit) shall apply to the Contract.

37. Pensions

37.1 The parties agree that the provisions of Schedule 19 (Pensions) will apply to this Contract.

38. Sub-Contracting Pensions

38.1 All Sub-contracts which may result in the employment of any former Authority employee being transferred to a Sub-Contractor pursuant to the transfer regulations shall include those provisions required under clause 1.2 of Schedule 19 (Pensions) of this Contract in respect of such Sub-contracts.

39. Redundancy

39.1 The Parties shall comply with their respective redundancy related obligations set out in Annex B to Schedule 9.

PART 11 – INTELLECTUAL PROPERTY

40. Foreground Intellectual Property

40.1 DEFCON 703 Intellectual Property Rights – Vesting in the Authority) shall apply to all the results relating to Foreground Intellectual Property under this Contract, unless prior to commencement of a specific task the Parties agree in writing that the Contractor shall own any Foreground Intellectual Property arising from that task. To the extent that any Foreground Intellectual Property shall be owned by the Contractor, the Authority shall be entitled to the rights in such Foreground Intellectual Property as set in clause 40.3. In the event that any task involves the prospect of the joint development of Intellectual Property, the Parties shall agree a disposition of the Intellectual Property to be created which takes account of the dependency on any Background Intellectual Property owned by the Authority and/or the Contractor, but the absence of any such agreement shall not be construed as meaning anything other than Authority ownership of the Foreground Intellectual Property.

Licensing of Foreground Intellectual Property

40.2 The Authority grants to the Contractor a non-exclusive, royalty free, licence to utilise the Authority owned Foreground Intellectual Property for the sole purpose of the Contractor performing its obligations under this Contract subject to compliance with DEFCON 531 (Disclosure of Information) and clauses 41.13 to 41.15 below, the Contractor may sub-licence, on the same terms, the Authority owned Foreground Intellectual Property to such Sub-Contractors as may require use of the Foreground Intellectual Property solely for the purposes of performing their sub-contract obligations.

40.3 In the event that the Contractor and the Authority shall have agreed that the Foreground Intellectual Property shall be owned by the Contractor, the Contractor shall grant to the Authority a perpetual, royalty free, non exclusive, world wide licence to copy, modify and use such Contractor owned Foreground Intellectual Property and have all such activities performed by third parties on behalf of the Authority for any United Kingdom Government purpose whatsoever.

Commercial Exploration of Foreground Intellectual Property

40.4 The Contractor shall not commercially exploit any Contractor owned Foreground Intellectual Property without first agreeing with the Authority the sum or sums which shall be paid to the Authority and subject also to the Contractor obtaining any further consent as may be required in respect of security and export licence. To the extent that it is required to facilitate commercial exploitation of the Contractor owned Foreground Intellectual Property, the Authority shall give consideration to granting a licence in respect of the Authority owned Foreground Intellectual Property and any relevant Background Intellectual Property owned by the Authority. Additionally, such licence to exploit Authority owned Foreground Intellectual Property and relevant Background Intellectual Property owned by the Authority shall be subject to any required security approvals and export licences. The obtaining of any required approvals outside the control of the Authority shall be the responsibility of the Contractor.

41. Background Intellectual Property

Authority Owned Background Intellectual Property

41.1 To the extent that it is able, and without incurring liability to any third party, the Authority grants to the Contractor a royalty free, non-exclusive licence to use Authority owned Background Intellectual Property for the purposes of the Contractor performing the Contract.

Unless the Authority shall specify to the contrary, the Contractor shall be entitled to sub-licence its Sub-Contractors to use the Authority owned Background Intellectual Property solely for performance of Sub-Contracts.

Contractor Owned Background Intellectual Property

41.2 Where the Contractor utilises Contractor owned Background Intellectual Property for the purposes of performing this Contract, the Contractor shall grant the Authority a perpetual, royalty free, non-exclusive licence to use, and have third parties use, on behalf of the Authority, such Contractor owned Background Intellectual Property for the purposes of this Contract, including the delivery of Government to Government Training and such licence shall extend on the same terms and to the same purposes being performed after the Expiry Date or the Termination Date.

Authority Supplied Third Party Owned Background Intellectual Property

41.3 The Authority shall grant a royalty free, non-exclusive licence to the Contractor to use Authority supplied third party owned Background Intellectual Property in accordance with any restrictions notified by the Authority. The Contractor shall to, to the extent that he is reasonably able to do so, not sub-licence such Authority supplied third party owned Background Intellectual Property with first obtaining the written consent of the Authority. Where any such sub-licence is granted, its use shall be solely for the purposes of performing Sub-Contractor obligations and subject to such constraints as may be notified by the Authority but which sub-licence shall not be of broader scope than that granted to the Contractor.

Contractor Supplied Third Party Owned Background Intellectual Property

41.4 Where the Contractor utilises third party owned Background Intellectual Property for the purposes of this Contract, the Contractor shall ensure that:

41.4.1 the Authority has a free right to use such third party owned Background Intellectual Property for the same purposes as it is employed under this Contract, including delivery of Government to Government Training.

41.4.2 the Contractor shall endeavour to ensure that such third party owned Background Intellectual Property is available for use by third parties for the same purposes as it is employed under this Contract, and that the Contractor shall notify the Authority of any issue of non compliance prior to utilising the relevant third party owned Background Intellectual Property for this Contract and await instruction from the Authority.

41.4.3 all third party owned Background Intellectual Property licences shall be perpetual unless the Authority agrees otherwise; and

41.4.4 all third party owned Background Intellectual Property licence shall be royalty free unless the Authority agrees otherwise; and

41.4.5 the Authority is supplied within twenty (20) days with copies of any agreed third party owned Background Intellectual Property licences.

Notification and Marking

41.5 The Contractor shall mark any copyright work delivered under the Contract with a copyright notice consistent with the requirements of DEFCON 703 (Intellectual Rights – Vested in the Authority) or as appropriate, such notice as may be relevant to specify the Contractor as owner of the work provided that in the latter case the copyright notice acknowledges the Authority's rights of use of such work under this Part 11 (Intellectual Property) and associated DEFCONs.

Any such notice shall be perpetuated in any copies of such work made by the Contractor, the Authority or any other Government Department or its agents or contractors.

41.6 The Contractor shall ensure that any Background Intellectual Property which it utilises for this Contract is, to the extent practicable, marked as such and delivered, where reasonable to do so, independently of Foreground Intellectual Property. Where the Contractor provides any Services under this Contract which mixes Foreground Intellectual Property and Background Intellectual Property, it shall, at the request of the Authority provide a justification for the mixing and at the reasonable request of the Authority, at no additional cost, shall provide these as separate Services.

Date Retention

41.7 During the Contract Period and for not less than six (6) years after, the Contractor shall maintain at least one copy (the "Control Copy") of all information to which the Contract applies.

41.8 The Control Copy shall be maintained in media and formats agreed to by the Authority but in any event be presented in a logical format which readily facilitates third party understanding of the Control Copy and association as appropriate with its relevant equipment. The Control Copy shall be the property of the Authority and marked as such and include the reference number of this Contract. The Authority may take possession of the Control Copy notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party, and copies of the Control Copy shall be supplied as required by the Authority from time to time by the Authority at the Authority's reasonable expense.

41.9 If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, then the Contractor's obligations under clauses 41.7 to 41.9. The Contractor shall not destroy or amend the Control Copy except as authorised in writing by the Authority.

Sub-Contracting

41.10 The Contractor shall not place any Sub-Contract which involves any element of design and development of Intellectual Property without ensuring that the Intellectual Property rights of the Authority are consistent with this Contract. Where appropriate, the Contractor shall invite the Authority to enter into a direct agreement with any prospective Sub-Contractor to ensure the Authority's rights of use in any Foreground Intellectual Property.

Continuity of Use

41.11 Recognising that the Authority may require continuity of anything utilised or delivered under this Contract, the Contractor shall at all times act in a manner so as to ensure that the Authority can, in the most cost effective way to the Authority, continue to utilise or deliver any Services or item provided by the Contractor under this Contract. In this respect, the Contractor shall immediately consult with the Authority in respect of any third party Background Intellectual Property licences required during the performance of this Contract which contain restrictions on use, price or otherwise and which restrictions would constrain or prevent the Authority or a third party on behalf of the Authority, from continuing to utilise that Background Intellectual Property for the same purposes as which it was utilised under this Contract.

41.12 The Contractor shall, if requested, and on fair and reasonable terms, grant to the Authority, or third parties on behalf of the Authority, licences in Contractor owned Background Intellectual Property for which licences are for purposes beyond those for which the Background Intellectual Property was utilised or granted under this Contract.

At the request of the Authority the Contractor shall endeavour to obtain, on fair and reasonable terms, licences for the Authority, or third parties on behalf of the Authority, in Contractor supplied third party owned Background Intellectual Property for purposes beyond those for which the Background Intellectual Property was utilised or granted under this Contract.

Controlled Information

41.13 Clauses 41.13 to 41.15 shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality Condition in this Contract.

41.14 The Contractor shall:

41.14.1 hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under this Contract.

41.14.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract.

41.14.3 not disclose the Controlled Information except to any third party without the prior written consent of the Authority.

41.14.4 protect the Controlled Information diligently against any unauthorised access and against loss;

41.14.5 act diligently to ensure that;

41.14.5.1 Controlled Information is disclosed to Contractor Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and

41.14.5.2 Contractor Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this clause 41.14;

41.14.6 compile a register of Controlled Information (the "Register of 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;

41.14.7 maintain the Register of Controlled Information for the Contract Period and for 2 years afterwards.

41.14.8 make the Register of Controlled Information available to the Authority upon reasonable notice for inspection and audit for the Contract Period and for 2 years thereafter; and,

41.14.9 after the Contract Period, return to the Authority all original and duplicate copies of the Controlled Information, or if requested by the Authority, destroy the Controlled Information and provide a certificate of destruction to the Authority.

41.15 Clauses 41.13 and 41.15 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:

41.15.1 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;

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

41.15.3 that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or

41.15.4 from its records, that the information was derived independently of the Controlled Information, to the extent that copying, use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

42. Retention of Rights

42.1 Nothing in this Contract shall extinguish to diminish any rights to use Intellectual Property which has been acquitted by either the Authority or the Contractor outside of this Contract.

43. Transfer

43.1 The Intellectual Property licences granted under this Contract shall not be assigned without the prior written permission of the licensor.

PART 12 – SECURITY AND CONFIDENTIALITY

44. Security Measures

This Clause 44 takes precedence over the provisions of DEFCON 531 (Disclosure of Information).

Definition

44.1 In this condition:

44.1.1 'Secret Matter' means any matter connected with the Contract, or its performance which is designated by the Authority in the Security Aspects Letter annexed to the Contract or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

44.1.2 'Employee' shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.

The Official Secrets Act

44.2 The Contractor shall:

44.2.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911 - 1989 apply to them and will continue so to apply after the completion or termination of the contract; and

44.2.2 if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, they are bound by the Official Secrets Acts 1911 - 1989 (and where applicable any other legislation).

Security Measures

44.3 Unless they have the written authorisation of the Authority to do otherwise, neither the Contractor nor any of their Employees shall, either before or after the completion or termination of the Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

44.3.1 who is not a British citizen;

44.3.2 who does not hold the appropriate authority for access to the protected matter;

44.3.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;

44.3.4 who is not an Employee of the Contractor;

44.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.

44.4 Unless they have the written authorisation of the Authority to do otherwise, the Contractor and their Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

44.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;

44.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

44.5 The Contractor shall:

44.5.1 provide the Authority:

44.5.1.1 upon request, such records giving particulars of those Employees who have had at any time access to any Secret Matter that is required to be kept in accordance with sub-clause 44.4.2.);

44.5.1.2 upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and their Employees are complying with their obligations under this Condition, including the measures taken or proposed by the Contractor so as to comply with their obligations and to prevent any breach of them;

44.5.1.3 full particulars of any failure by the Contractor and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent:

44.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in sub-clause 44.4.2), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with the Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as they may reasonably require.

Sub-Contracts

44.7 If the Contractor proposes to make a Sub-Contract will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:

44.7.1 submit 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;

44.7.2 incorporate into the Sub-Contract the terms of the clause 45 and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor":

44.7.3 inform the Authority immediately they become 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.

Termination

44.8 The Authority shall be entitled to terminate immediately if:

44.8.1 the Contractor is in breach of any obligation under this Condition; or

44.8.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown; where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.

45. Security Measures Provisions to be included in Relevant Sub-Contracts

45.1 The Contractor shall include the following clauses in any relevant Sub-contract.

“Definition

1. *In this Condition:*

a. *‘Secret Matter’ means any matter connected with the Agreement, or its performance which the First Party informs the Second Party in writing has been designated by the Authority as “TOP SECRET” or “SECRET” and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;*

b. *‘Employee’ shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given.*

c. *The ‘Authority’ means the Secretary of State for Defence.*

The Official Secret Acts

2. *The Second Party shall:*

a. *take all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911 – 1989 apply to them and will continue to do so to apply after the completion or termination of the Agreement and*

b. *if directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Agreement and after its completion or termination, they are bound by the Official Secrets Acts 1911 – 1989 (and where applicable any other legislation).*

Security Measures

3. *Unless they have the written authorisation of the Authority to do otherwise, neither the Second Party nor any of their Employees shall, either before or after the completion or termination of the Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:*

- a. *who is not a British citizen;*
- b. *who does not hold the appropriate authority for access to the protected matter;*
- c. *in respect of whom the Authority has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;*
- d. *who is not an Employee of the Second Party;*
- e. *who is an Employee of the Second Party and has no need to know the information for the proper performance of the Agreement.*

4. *Unless they have the written permission of the Authority to do otherwise, the Second Party and their Employees shall, both before and after the completion or termination of the Agreement, take all reasonable steps to ensure that:*

- a. *no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Agreement;*
- b. *any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.*

A decision of the Authority on the question of whether the Second Party has taken or is taking reasonable steps as requested by this clause, shall be final and conclusive.

5. *The Second Party shall:*

- a. *provide the Authority:*
 - (1) *upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with sub-clause 4(b);*
 - (2) *upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and their Employees are complying with their obligations under this Condition, involving the measures taken or proposed by the Second Party so as to comply with their obligations and to prevent any breach of them;*
 - (3) *full particulars of any failure by the Second Party and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;*
- b. *ensure that, for the purpose of checking the Second Party's compliance with the obligation in sub-clause 4(b), a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of the Agreement. Such representative shall be entitled to all such information as they reasonably require.*

6. *If at any time either before or after the completion or termination of the Contract, the Second Party or any of their Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forth with inform the Authority of the matter with full particulars thereof.*

Sub-Contracts

7. *If the Second Party proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Second Party 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 Second Party which the Authority shall reasonably require;*
- b. incorporate into the Sub-Contract the terms of this Condition and such secrecy and security obligations as the Authority shall direct;*
- c. inform the Authority immediately they become 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 Agreement.*

Termination

8. *The First Party shall be entitled to terminate the Agreement immediately if:*

- a. the Second Party is in breach of any obligation under this Condition; or*
- b. the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown; where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.”*

46. Controlled Information

46.1 This clause 46 shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality condition of the Contract.

46.2 For the purposes of this Condition ‘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.

46.3 The Contractor shall:

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

46.3.2 not to copy the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Contract;

46.3.3 not to disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;

46.3.4 protect the Controlled Information diligently against unauthorised access and against loss; and,

46.3.5. act diligently to ensure that:

46.3.5.1 controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;

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

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

46.4.1 compile a register of the 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.

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

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

46.4.4 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.

46.4.5 This Condition 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:

46.4.5.1 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;

46.4.5.2 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;

46.4.5.3 that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or

46.4.5.4 from its records, that the information was derived independently of the Controlled Information.

47. Reportable OFFICIAL and OFFICIAL-SENSITIVE Security Requirements

47.1 'Information' means information recorded in any form disclosed or created in connection with the Contract.

47.2 The Contractor shall protect all information relating to the aspects designated as Reportable OFFICIAL and OFFICIAL-SENSITIVE as identified in the Security Aspects Letter annexed to this Contract, in accordance with the official security conditions annexed to the Security Aspects Letter.

47.3 The Contractor shall ensure that the requirements and obligations set out under clause 47.1 above are flowed down to their sub-contractors.

48. Security Requirements

The Commanding Officer for each Establishment is responsible for all security on that Establishment. For the avoidance of doubt, this shall include personnel security, physical security and IT security. The Commanding Officer may delegate any part of its security responsibilities to the relevant Establishment Security Officer (“ESyO”).

48.2 The Contractor shall provide the name of the Contractor Security Officer to the Authority. The Contractor’s Security Officer and the ESyO shall liaise in relation to relevant Establishment security matters.

48.3 The security requirements set out in this clause 48 shall apply to the Contractor. Contractor’s Employees and any Sub-Contractor. For the avoidance of doubt, the Contractor is not relieved from any obligation contained in this Contract as a result of a breach of this clause 48.

Personnel Security

48.4 The Contractor shall ensure that all the Contractor Employees (including Sub-Contractors, agents and representatives) delivering Services under the Contract have sufficient security clearances in place.

48.5 The Contractor must obtain a Baseline Personnel Security Standard or Baseline Standard check for each Contractor Employee (including Sub-Contractors, agents and representatives) and provide the information to the Authority. Information on the Baseline Personnel Security Standard is contained in the Cabinet Office document ‘HMG Baseline Personnel Security Standard’ (available on the website www.cabinetoffice.gov.uk). For avoidance of doubt, security clearance received by way of any other contract with any Government Department or via the Contractor’s List X Status does nothing to remove or later any of the obligations on the Contractor under this clause 48.5.

48.6 In the event that the Authority requires any Contractor Employee (including Sub-Contractor) to have clearances additional to the Baseline Standard, the Contractor shall co-operate, and shall ensure its employees and Sub-Contractors co-operate, with the Authority to enable such additional clearances to be obtained. Identification of posts requiring above restricted clearance shall be identified in Schedule 2 (Statement of Requirements).

Physical Security

48.7 The Contractor shall ensure that all Contractor Employees abide by the physical security requirements of each Commanding Officer, as shall be notified to it from time to time.

IT Security

48.8 The Contractor shall ensure that all Contractor Employees shall abide by the IT security requirements of each Commanding Officer, as shall be notified to it from time to time.

Declaration of Convictions – Working with Children and Vulnerable Adults

48.9 The Contractor shall (to the extent permitted by Law) procure that all Contractor Employees or persons performing any Services under this Contract who may reasonably be expected in the course of their employment or engagement to have access to children or vulnerable adults shall before he or she begins to attend the Establishments:

48.9.1 be questioned concerning their convictions; and

48.9.2 only in the case of Contractor Employees or persons performing any Services under this Contract who may reasonably be expected in the course of their employment to have access to children or vulnerable adults, be required to complete a police check form or consent to an application for a certificate under Part V of the Police Act 1997.

48.9.3 the Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following completion of a police check or an application for a certificate under clause 48.4 above, in either case of which the Contractor or its Sub-Contractor is aware or ought to be aware, is employed without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

48.9.4 the Contractor shall procure that the Authority is kept advised at all times of any person employed or engaged by the Contractor or any Sub-Contractor in the performance of any of the work under this Contract who, subsequent to commencement of such employment or engagement, receives a conviction of which the Contractor or its Sub-Contractor become aware of whose previous convictions become known to the Contractor or Sub-Contractor and provided that the Authority (acting reasonably) considers the conviction has a material bearing on the suitability of any such person to be engaged in performing any of the work under this Contract, such person shall only continue to have access to children and vulnerable adults, for the purpose of providing the relevant Services, with the Authority's prior written consent, not to be unreasonably withheld or delayed.

48.9.5 the contractor shall comply with the provision of JSP 893.

Police Guards and Security

48.9.6 the contractor and his employees, agents and Sub-Contractors shall co-operate with and obey instructions or directions given by the MOD Police, Military Police and uniformed guards, in pursuance of their duties.

48.9.7 the Contractor shall consent to the servants or officers of the Authority searching any vehicles, containers, equipment, work bags and other chattels (together the "chattels") owned by the Contractor, his employees, agents or Sub-Contractors whilst the chattels are on, or as a condition of access to, the Establishment(s). Routine checks may be carried out on those entering or leaving an 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.

48.9.8 the Authority reserves the right to expel persons from the Establishment(s) who do not consent to being searched.

PART 13 – CHANGE

49. Change and Change Management

49.1 In addition to the provisions of DEFCON 502 (Specification Changes), DEFCON 503 (Formal Amendments to Contract), DEFCON 566 (Change of Control of Contractor), DEFCON 606 (Change and Configuration Control) and DEFCON 620 (Contract Change Control Procedure) the provisions of Schedule 5 (Change and Change Management) shall have effect.

PART 14 – EXPIRY AND TERMINATION

50. Termination on Expiry of Contract Period

50.1 This Contract shall terminate automatically on the Expiry Date unless it has been terminated earlier in accordance with the provisions of this Contract. The Contractor shall not be entitled to any compensation for termination of this Contract on the Expiry Date.

51. Failure of Performance

51.1 If a breach of this Contract by the Contractor has continued or occurred frequently for a period of 3 (three) months, the Authority may service on the Contractor:

51.1.1 specifying that it is a formal warning notice.

51.1.2 giving reasonable details of the breach; and

51.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of the whole or part of this Contract in accordance with this Clause 51.

51.2 If, following service of such a warning notice, the breach specified has continued or recurred frequently after the date falling thirty (30) days after the date of service of such notice, then the Authority may serve another notice on the Contractor specifying that it is a final warning notice;

51.2.1 stating that the breach specified has been the subject of a prior formal warning notice served on the Contractor; and

51.2.2 stating that if such failure continues or recurs frequently within a thirty (30) day period after the date of service of the final warning notice then such breach shall constitute a “**Persistent Breach**”.

Right to Terminate

51.3 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of clause 51.4 and subject to the provisions of clauses 51.5 to 51.8.

51.4 If a Contractor Default has occurred and the Authority wishes to terminate the whole or any part of this Contract pursuant to clause 51.1, it must serve a notice (the “**Termination Notice**”) on the Contractor stating:

51.4.1 that the Authority is terminating this Contract (or part) for Contractor Default;

51.4.2 where relevant, the part of this Contract that the Authority is terminating;

51.4.3 the type and nature of Contractor Default that has occurred, giving reasonable details; and

51.4.4 that this Contractor (or part) shall (subject to clauses 51.5 to 51.8 below) terminate on the day (the “**Contractor Default Termination Date**”) falling forty (40) Business Days after the date the Contractor receives the Termination Notice.

Rectification

51.5 Where a Termination Notice cites a Contractor Default of the type and nature falling under limb (a) material breach and/or limb (b) Persistent Breach (h) failure to commence the provision of any Service and/or limb (i) failure to take out Required Insurance and/or limb (k) breach of personal data protection of the definition of “**Contractor Default**” in Schedule 1 (Definitions and Interpretations), the Contractor shall, in consultation with the Authority, have the opportunity to set out how it intends to remedy such Contractor Default.

51.6 Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked.

51.7 Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling forty (40) Business Days after the date by which the remedy was agreed to be implemented.

51.8 If by the day falling forty (4) Business Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, at its discretion, may agree) the Authority considers that such proposed remedy will not restore the provision of the Services or any part in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify all breaches of this Contract, the Authority may terminate the whole or part of this Contract immediately (and the Contractor Default Termination Date shall be the day falling forty (40) Business Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, at its discretion, may agree)).

Termination date for Contractor Default

51.9 Following the issue of a Termination Notice pursuant to clause 51.4 above, and where the Authority is terminating the whole of this Contract, this Contract shall (subject to clauses 51.5 to 51.8 above) terminate on the Contractor Default Termination Date.

Partial Termination

51.10 Where the Authority is terminating part of this Contract, the Parties shall, subject to clauses 55 (Continuing Obligations), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.

51.11 For the avoidance of doubt, where clause 51.10 above applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

Financial Consequences of Termination for Contractor Default

51.12 Where this Contract (or any part) is terminated pursuant to this clause 51, the provisions of clauses 51.13 to 51.15 below shall apply.

51.13 The Contractor shall be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment) for any aspect of the Services that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract.

51.14 Where the Authority makes alternative arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor the cost of making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such other arrangements throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to this clause 51.

51.15 In the event that, as a result of any Contractor Default, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstruction of that data and shall provide a full credit in respect of any charge levied for its transmission.

52. Termination in respect of Employment Matters

52.1 The Authority may terminate this Contract any time before the Expiry Date in the following circumstances:

52.1.1 if the Contractor does not enter into the Admission Agreement by the Service Commencement Date;

52.1.2 if the Contractor breaches the provisions of the Admission Agreement provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty-eight (28) days of service of a notice from the Minister for the Cabinet Office setting out particulars of the breach and requiring the Contractor to remedy it;

52.1.3 if the Contractor breaches the provisions of Schedule 9 (Transfer Regulations Part 3) provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty-eight (28) days of service of a notice from the Authority setting out particulars of the breach and requiring the Contractor to remedy it; or

52.1.4 where notice to terminate the Admission Agreement has been served under clause 13.1 of the Admission Agreement.

53. Co-operation on Expiry or Termination of Contract

53.1 During the final twelve (12) months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract or any part in accordance with its terms, the Contractor shall co-operate fully in accordance with Schedule 9 (Transition Plans) with the transfer of responsibility for the provision of the Services (or any part) 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 Condition the meaning of the term "co-operate" shall include:

53.1.1 liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the Services and transfer of such provision to the Authority or to such Follow-On Contractor;

53.1.2 allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any Establishments and/or assets used in the provision of the Services, but not so as to interfere with or impede the provision of the Services; and

53.1.3 without prejudice to the obligations of the Contractor pursuant to DEFCON 531 (Disclosure of Information), providing to the Authority and/or to any Follow-On Contractor all and any information concerning:

53.1.3.1 any Establishments; and

53.1.3.2 provision of the Services which is reasonably required for the efficient transfer of responsibility for performance of the Contractor's obligations, but excluding any information which is commercially sensitive to the Contractor (and for the purpose of this clause 53 "commercially sensitive" shall mean information

which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor, but shall not include any information referred to in Part 10 (Employment Matters).

53.1.3.3 and any information and data generated or supplied in connection with the Contract.

53.2 For a period of six (6) months after the Expiry Date or the Termination Date in accordance with its terms, the Contractor shall provide all reasonable assistance, guidance and information to the any Follow-On Contractor or the Authority (as the case may be), and shall be paid monthly in arrears its reasonable costs actually incurred and directly arising from such provision, subject to:

53.2.1 such provision having been expressly requested or approved by the Authority at the end of each month; and

53.2.2 the Contractor providing satisfactory evidence of the same to the Authority at the end of the month;

53.3 Without prejudice to the provisions of Clause 53.2, the Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for provision of the Services (or any part) to a Follow-On Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

53.4 Following the Expiry Date or any earlier Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld), be allowed reasonable access to land and/or premises owned or controlled by the Authority in order to carry out winding-down activities.

53.5 During the final twelve (12) months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract (or any part), the Contractor shall protect and preserve property in its possession in which the Authority has an interest.

53.6 Without prejudice to Clauses 53.1.3 and 53.5, on termination of this Contract (or any part), the Contractor shall, upon request by the Authority, which request shall be made within three (3) months of:

53.6.1 the Expiry Date; or

53.6.2 service of any Termination Notice, as soon as practicable, allow the Authority access to all data and information (subject to DEFCON 703 (Intellectual Property Rights – Vested in the Authority) required by the Authority to take over the terminated activities of this Contract, (and for the purposes of this Clause 53. “data and information” shall mean all data and information germane to the provision, by the Contractor of the Services in the performance of this Contract, and other relevant data and information reasonably required by the Authority which the Contractor is able to provide in accordance with this Contract relating to Intellectual Property Rights or between the Contractor and any third party).

53.7 The Authority may request that Sub-Contracts be novated to the Authority on the same terms as the Sub-Contracts, and the Contractor shall give all reasonable assistance to the Authority in seeking the novation of Sub-Contracts placed in support of the Services under this Contract are novated to the Authority as requested. All costs (including the Contractor's reasonable and proper costs) associated with any such novation of Sub-Contracts shall be borne by the Authority.

54. Force Majeure

54.1 The Contractor shall not be in breach of this Contract, nor liable for late 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:

54.1.1 acts of nature;

54.1.2 war;

54.1.3 hostilities;

54.2 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.

54.3 Subject to Clause 54.4 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.

54.4 The maximum extension of time granted under this clause shall be limited to ninety (90) days after which time the Authority may, on giving written notice to the Contractor, terminate this Contract with immediate effect.

55. Continuing Obligations

55.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract,

55.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and

55.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:

55.1.2.1 DEFCON 501 and Clause 2 (Definitions and Interpretations);

55.1.2.2 DEFCON 76 (Contractor’s Personnel at Government Establishments);

55.1.2.3 DEFCON 694 (Accounting for the Property of the Authority);

55.1.2.4 DEFCON 611 (Issued Property);

55.1.2.5 Part 8 Contract Price, Billing and Payment;

55.1.2.6 Clause 31 (Indemnities);

55.1.2.7 Part 10 (Employment Matters);

55.1.2.8 Part 11 (Intellectual Property);

55.1.2.9 Part 12 (Security and Confidentiality);

55.1.2.10 Clause 51 (Failure of Performance);

55.1.2.11 DEFCON 656 (Break);

55.1.2.12 DEFCON 520 (Corrupt Gifts and Payments of Commission);

55.1.2.13 Clause 55 (Co-operation on Expiry or Termination of Contract);

55.1.2.14 DEFFORM 24 Example (Deed of Indemnity given by a Parent Company in respect of a subsidiary) or DEFFORM 24A (Bond given by a Bank as a Deed in respect of a Single Contract) if required by the Authority;

55.1.2.15 DEFCON 530 (Dispute Resolution)

55.1.2.16 DEFCON 529 Law (English), and

55.1.2.17 any other 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.

56. Exit Plan

56.1 The Contractor shall comply with its obligations set out in the Exit Plan as contained in Schedule 7 (Transition Plans).

56.2 The Exit Plan shall be reviewed annually (or more frequently if agreed between the Parties). Revised versions shall take into account any new or amended arrangements. The Authority shall review the Exit Plan within ten (10) working days of receipt from the Contractor and shall notify the Contractor of any suggested revisions. Revisions shall either be incorporated by the Contractor into the Exit Plan within ten (10) working days of receipt or shall be discussed with the Authority through the dispute resolution procedure set out in DEFCON 530 (Dispute Resolution). The agreed Exit Plan shall be signed as approved by each Party.

Transfer

56.3 In the event that the Authority elects to transfer the required Services (or any part thereof to any replacement contractor) at the Expiry Date or Termination Date, the Authority shall, as soon as is reasonably practicable, notify the Contractor. In any event, not later than thirty (30) days before the transfer is due to take place the Contractor shall be notified of details such as the contractor's company or organisation name, postal address, telephone number, responsible contacts, and any other such information that the Contractor reasonably requires in order to discharge its obligations.

56.5 In the event of a transfer of responsibility of the Services from the Contractor at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer under arrangements to be notified to the Contractor by the Authority. Co-operation shall include, but not be limited to: site visits by representatives of companies tendering for a replacement contract, condition surveys and performance checks on all facilities used for the purpose of the Contract.

Execution of Transfer

56.6 Where the Authority deems it appropriate, it shall give the Contractor its explicit, written authority to transfer any Authority data and equipment formerly owned by the Authority in its custody, which is to be transferred pursuant to the Exit Plan, to any replacement contractor specified by the Authority.

Post Transfer

56.7 The Authority shall confirm its receipt, in writing to the Contractor within thirty (30) working days of such receipt, of any payments or repayments due to or from the Contractor.

56.8 The Authority shall confirm its receipt, in writing to the Contractor within thirty (30) working days of such receipt, of any equipment formerly owned by the Authority and returned by the Contractor.

PART 15 – SUB-CONTRACTS

57. Matters to be included in Sub-Contracts

57.1 The Contractor shall ensure that all Sub-Contracts shall at all times include:

57.1.1 provisions such that the Sub-Contract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority;

57.1.2 provisions that the Authority's rights referred to in this Part 13 (Sub-Contracts), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable; and

57.1.3 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Condition and that any such release shall not amount to a breach of any provision of confidentiality within the Sub-Contract.

57.2 In accordance with this clause 69 (Matters to be included in Sub-Contracts), the Authority shall be entitled to directly enforce its contractual rights from the Sub-Contractors pursuant to its right under the Contracts (Rights of Third Parties) Act 1999.

58. Secrecy and Security

58.1 The Contractor shall ensure that all Sub-Contracts shall include provisions for placing Sub-Contractors and Suppliers under obligations in relation to secrecy and security corresponding to (and of equal effect on the Sub-Contractor to) those placed on the Contractor by the requirements set out or referred to in Part 12 (Security and Confidentiality).

58.2 The Contractor shall (and shall procure that its Sub-Contractors and Suppliers shall) give such notices, directions, requirements and decisions to the Sub-Contractors and Suppliers as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts pursuant to this clause 58 into operation in such cases and to such extent as the Authority may direct.

58.3 The Contractor shall give the Authority such information and particulars as the Authority may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of this clause 58 have been and are being observed, and as to what the Contractor has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach.

58.4 Nothing in this clause 58 shall be construed as intended to prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of an Legislation, the duty of that person to give that information or do that thing.

59. Sub-Contractor IPR

59.1 The Contractor shall ensure that all Sub-Contracts shall include;

59.1.1 a licence for the Authority under IPR owned or controlled by a Sub-Contractor in the same terms as the licence the Authority receives in relation to IPR owned or controlled by a Contractor as set out in clause 47 (Intellectual Property Rights – Vested in the Authority); and

59.1.2 an assignment of rights in IPR owned or controlled by a Sub-Contractor in the same terms as the assignment to the Authority of IPR owned or controlled by a Contractor as set out in Part 12 (Intellectual Property); and

59.1.3 provisions that the Authority and the Contractor may register, in favour of the Authority, any licence of registered IPR owned or controlled by a third party.

59.2 The Contractor shall not enter into any Sub-Contract concerned with this Contract, nor extend any Sub-Contract derived from this Contract, unless the Authority has stated in writing to the Contractor that the Authority does not require any further assistance in respect of IPR beyond the Contractor meeting those obligations set out under clause 59.1. However, where the obligations under clause 59.1 are considered insufficient by the Authority, the Contractor shall not enter into any Sub-Contract concerned with this Contract nor extend any Sub-Contract derived from this Contract without first ensuring that the Authority obtains, through a direct agreement with the Sub-Contractor, the assurances that the Authority requires in respect of IPR on the same basis as provided for under this Contract in respect of Contractor owned or controlled IPR.

60. Other Provisions

60.1 The Contractor shall also ensure that all Sub-Contracts contain provisions capable of giving effect to the requirements of the following:

- 60.1.1 DEFCON 76 (Contractor's Personnel at Government Establishments);
- 60.1.2 Clause 11 (Injuries, Disease and Dangerous Occurrences);
- 60.1.3 Clause 17 (Contractor's Conduct on Authority Establishments);
- 60.1.4 DEFCON 611 (Issued Property);
- 60.1.5 DEFCON 694 (Accounting for the Property of the Authority);
- 60.1.6 Clause 40 (Foreground Intellectual Property);
- 60.1.7 Clause 41 (Background Intellectual Property);
- 60.1.8 Part 12 (Security and Confidentiality);
- 60.1.9 DEFCON 531 (Disclosure of Information);
- 60.1.10 DEFCON 566 (Change of Control of Contractor);
- 60.1.11 Clause 51 (Failure of Performance);
- 60.1.12 DEFCON 659 (Break);
- 60.1.13 DEFCON 520 (Corrupt Gifts and Payments of Commission);
- 60.1.14 DEFCON 635 (Co-operation on Expiry of the Contract);
- 60.1.15 Clause 53 (Co-operation on Expiry and Termination of the Contract);
- 60.1.16 Clause 62 (Quality Assurance);
- 60.1.17 Clause 65 (Assignment);

60.1.18 DEFCON 529 (Law, English);

60.1.19 DEFCON 532A (Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority));

60.1.20 DEFCON 23 (Special Jigs, Tooling and Test Equipment)

61. Sub-Contracting

61.1 The Contractor shall ensure (and shall secure that all Sub-Contractors ensure) that all Sub-Contracts include a requirement for any further Sub-Contracts of lower tiers to contain provisions capable of giving effect to all of the provisions of Part 15 (Sub-Contracts), to the extent reasonably required by the Authority.

61.2 The Contractor shall perform its obligations under, and observe all the terms of, any Sub-Contract which it has entered into with a Sub-Contractor.

61.3 Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Contractor from being employed by the Authority at any Establishment.

61.4 Prior to entering into any Sub-Contract, the Contractor shall notify the proposed Sub-Contractor that the Contractor is not, by virtue of prior agreement with the Authority entitled to place a contract with any Sub-Contractor which does not comply with the conditions of this Part 15 (Sub-Contracts).

61.5 The Contractor shall retain, for two (2) years from the Termination Date or the Expiry Date as the case may be (or such other period as the Authority may notify to the Contractor), a copy of all Sub-Contracts (or relevant parts) sufficient to demonstrate the Authority's rights with respect to Part 15 (Sub-Contracts), including rights in respect of IPR held by a Sub-Contractor and shall provide certified copies of each records to the Authority upon request.

61.6 The Contractor shall inform the Authority immediately when it becomes aware of any breach by any Sub-Contractor or Supplier of any of the requirements set out or referred to in Part 12 (Security and Confidentiality) and, if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

Change of Sub-Contractors and Terms of Sub-Contracts

61.7 By entering into this Contract, the Authority approves the Sub-Contractors appointed by the Contractor which the Contractor has notified to the Authority as at the date of this Contract.

61.8 If the Contractor wishes to replace a Sub-Contractor or add an additional Sub-Contractor, the Contractor shall submit to the Authority:

61.8.1 the name of the proposed Sub-Contractor;

61.8.2 a statement of the work to be carried out by such proposed Sub-Contractor;

61.8.3 a copy of the proposed Sub-Contract which shall include the matters required pursuant to Part 15 (Sub-Contracts); and

61.8.4 the reason for the change in Sub-Contractor and benefits where applicable;

61.8.5 any other details known to the Contractor which the Authority may reasonably require.

61.9 The Authority may, at its sole discretion, seek to acquire the same rights from a proposed Sub-Contractor as are recited in Part 11 (Intellectual Property Rights) by means of a direct IPR agreement with a proposed Sub-Contractor, and the Contractor may not place a Sub-Contract until the Authority has confirmed in writing either that it has entered into such a direct agreement or that it does not wish to do so. Should the Authority opt for such a direct agreement, the Authority shall inform the Contractor, provided always that the Authority shall be responsible for its own costs in procuring and negotiating any such direct agreements.

61.10 The Authority shall (acting reasonably) confirm or reject the identity of the proposed Sub-Contractor and/or the terms of the proposed Sub-Contract within thirty (30) Business Days of the Contractor's proposed change to this Contract (submitted pursuant to Clause 61.8 above), provided that it shall be reasonable for the Authority to reject any proposed Sub-Contractor who is not suitable substitute Sub-Contractor and/or who will not be appointed under a sub-contract including the matters required pursuant to this Part 15 (Sub-Contracts).

61.11 The Contractor shall not, in respect of this Contract, employ a proposed new Sub-Contractor and/or use a proposed Sub-Contract, and shall ensure that a Sub-Contractor does not, in respect of this Contract, employ a Sub-Contractor and/or use a proposed Sub-Contract, rejected by the Authority pursuant to clause 61.10 above.

61.12 On:

61.12.1 the granting of Authority's approval pursuant to clause 61.10; and

61.12.2 the entering into of the relevant Sub-Contract documentation by the parties to it;

the proposed new sub-contractor and sub-contract shall become a Sub-Contractor and Sub-Contract respectively for the purposes of this Contract.

Sub-Contracting to Supported Employment Employees

61.13 When placing Sub-Contracts, the Contractor is asked to give consideration, as far as possible, to the placing of work on a competitive basis with Supported Employment Enterprises.

61.14 Where the Contractor enters into a Sub-Contract for the purpose of performing this Contract, a term shall be included in such Sub-Contract which requires payment to be made to the supplier or contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the Sub-Contract requirements.

PART 16 – GENERAL CONTRACT PROVISIONS

62. Quality Assurance

62.1 The Contractor shall develop, implement a Quality Management System that complies with the following Quality Standards which shall cover all aspects of the Services under this Contract:

62.1.1 AQAP 2110 Edition 3: December 2009 – NATO Quality Assurance Requirements for Design, Development and Production;

62.1.2 AQAP 2105 Edition 2: December 2009 – NATO Requirements for Deliverable Quality Plans;

62.2 A Deliverable Quality Plan is required in accordance with DEFCON 602A (Deliverable Quality Plan) and AQAP 2105 Edition 2 – NATO Requirements for Deliverable Quality Plans. The deliverable Quality Plan that satisfies the Authority's requirements, shall be delivered to the Quality Focal Point within three (3) months of the Effective Date.

62.3 The Parties shall comply with their respective obligations set out in the following DEFSTANs:

62.3.1 DEFSTAN 05-61 Quality Assurance Procedural Requirements – Part 1 (Issue 5) Concessions, Part 4 (Issue 3 reprinted January 2011 incorporating Amendment No 1) Contractors Working Parties for Aeronautical Equipments, Part 9 (Issue 4) Independent Inspection Requirements for Safety Critical Items;

62.3.2 DEFSTAN 05-99 (Issue 4 dated 23 December 2010) Managing Government Furnished Equipment in Industry. Parties shall comply with all subsequent editions or superseding standards;

62.3.3 MAA Regulatory Article 4814 (MAP-01 Chapters 7.5 and 15.1.1) and MAA Regulatory Article 4810 which in part replaces DEFSTAN 05-123 (Issue 2 Part 4 Section 4) Fault reporting and Investigation

62.3.4 DEFSTAN 00-970 (Design and Airworthiness Requirements for Service Aircraft) where relevant and DEFSTAN 05-123 Chapter 201 (interchangeability)

62.3.5 MAA Regulatory Article 4800 Series (MAP-01 and MAP-02) which replaces DEFSTAN 05-123 (Issue 2 Part 5 Section 2) document requirements for Aircraft, Engines and Equipment (Log Card Procedures)

62.3.6 MAA Regulatory Article 4800 Series in part replaces DEFSTAN 05-130 (Issue 2 dated 1 October 2008 Part 1) MAOS Military Regulations Part 145; Maintenance Organisations

62.4 Sub-Contractors shall be managed in accordance with DEFSTAN 05-61 Part 4 Issue 3 – Quality Assurance Procedural Requirements – Contractor's Working Parties.

62.5 Safety critical items shall be subject to independent inspection in accordance with DEFSTAN 05-61 Part 9, Issue 4 – Quality Assurance Procedural Requirements – Independent Inspection Requirements for Safety Critical Items.

62.6 The Parties shall use AQAP 2009 Edition 3 dated March 2010 for guidance on the application and interpretation of AQAPs.

62.7 For the avoidance of doubt, complicity with the above DEFSTANS shall be applied at the above or subsequent editions or superseding standards.

63. Working with Other Authority Contractors

63.1 The Contractor shall co-operate and liaise in good faith with all other Authority contractors at the Establishments as necessary to enable it to perform its obligations under this Contract.

63.2 In performing its obligations under this Contract the Contractor shall have regard to the obligations of the Authority under any other contracts entered into relation to the Establishments insofar as the Contractor has been given notice of any such obligations at any time and shall not by any act, omission or default do anything to cause or contribute to any breach by the Authority of any such obligation.

63.3 At the request of the Authority, the Contractor shall enter into good faith discussions with the Authority and any other relevant Authority contractor, to agree an interface agreement.

64. Management of Contractor Waste

64.1 The Parties agree that:

64.1.1 the Authority shall be responsible for the safe disposal, in accordance with the Waste Electrical and Equipment (WEEE) Directive of any electrical and electronic equipment supplied to the Contractor as GFA in accordance with Schedule 2 (Statement of Requirements);

64.1.2 the Contractor shall be responsible for the safe disposal, in accordance with the (WEEE) Directive of any electrical and electronic equipment procured by the Contractor in connection with the Services under this Contract.

64.2 The Contractor shall comply with each of the Establishment's Waste Management Plans.

65. Assignment

Assignment of the Contract by the Contractor

65.1 Subject to Part 15 (Sub-Contracts), the Contractor shall not sub-contract assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority's Representative.

Transfer of this Contract by the Authority

65.2 The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) other than in respect of the whole of this Contract to any person, other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

65.2.1 a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or

65.2.2 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

66. Measures in a Crisis

66.1 If, at any time, the Authority believes, in its sole opinion, that there exist circumstances to which clause 66.2 applies, the Authority's Representative may issue a written notice to the Contractor's Representative of such belief.

66.2 The circumstances referred to in clause 66.1 are where, in view of:

66.2.1 the national interest, the requirements of national security, or the occurrence of a state of transition to war, war or other emergency (whether or not involving hostilities); and/or

66.2.2 a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; and/or

66.2.3 a request by NATO, the United Nations, the European Union or any other country for support and assistance in relation to international obligations, it is necessary, appropriate or desirable for the Authority to take all or any of the measures described in clause 66.4 and/or clause 66.5.

66.3 Measures in a Crisis shall cease to apply when the Authority's Representative issues a written notice to that effect to the Contractor's Representative and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

Effect of Implementation of Measures in a Crisis

66.4 If the Authority's Representative has issued the notice contemplated in Condition 66.1 the Authority's Representative may require the Contractor, within such period as the Authorities Representative in its sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information in the possession, knowledge or control of the Contractor as the Authority's Representative may, in its sole discretion, require including information relating to all or any of the following matters:

66.4.1 the Services currently being carried out by the Contractor for the Authority and any third parties; and/or

66.4.2 the Services to be carried out by the Contractor (and due to commence within a period specified by the Authority) for the Authority and any third parties; and/or

66.4.3 the Contractor's current deployment of its employees whether inside or outside the Establishments; and/or

66.4.4 all supporting equipment and documentation currently held by the Contractor and the location of such equipment and documentation, and the Contractor shall promptly and diligently comply fully with the requirement to provide such information.

66.5 Upon providing the Authority's Representative with the information requested pursuant to Clause 66.4, or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority's Representative, discuss in good faith with the Authority's Representative any matter which the Authority, in its sole

opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, the current supply of Services, or to be provided, by the Contractor. These shall be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to clause 66.1, including the following matters:

66.5.1 the revision (including the early completion, suspension or cancellation) of any Services for the Authority;

66.5.2 the early completion, suspension or cancellation of any Services by the Contractor for third parties; and

66.5.3 the immediate implementation of new Services, and the Parties shall endeavour, as far as reasonably possible, to reach agreement as matter of urgency on such matters.

Authority's Overriding Rights

66.6 Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in clause 66.5 may not have been taken, required to be taken, or have been completed, the Authority may, at any time and in its sole discretion, step-in to this Contract, pursuant to clause 66 and/or the Authority's Representative may instruct the Contractor.

66.6.1 to increase , to suspend, or to cancel, any part of the Services carried out by the Contractor, to remove (permanently or temporarily) the property of third parties from the Establishments and to take all reasonable steps to minimise and mitigate any loss or damage to the Contractor;

66.6.2 to accelerate to early completion or to suspend the provision of the Services;

66.6.3 to carry out any changes whatsoever to this Contract required by the Authority without reference to Part 13 (Change) of this Contract; and

66.6.4 to deploy its employees in accordance with the Authority's directions, and the Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in this Condition 66.6.

66.7 The Contractor shall not be required to take, or refrain from, any action which:

66.7.1 is outside the power of technical capability or capacity of the Contractor or its Sub-Contractors;

66.7.2 requires the Contractor to infringe any Law; or

66.7.3. is beyond the financial capacity of the Contractor (unless the Authority meets any costs arising as a result of such action as and when such costs accrue to the Contractor).

Authority Indemnity on Measures in a Crisis

66.8 If the Authority instructs the Contractor pursuant to this clause 66 to take actions not otherwise required under this Contract, the Authority shall indemnify the Contractor against any losses from any claim or action for damages by a third party against the Contractor arising out of any action which the Authority may require the Contractor to take pursuant to Condition 66.6 provided that:

66.8.1 the Contractor shall promptly notify the Authority in writing of any such claim or action or threatened claim or action;

66.8.2 the Contractor shall act in accordance with the Authority's instructions regarding the manner in which such claim or action or threatened claim or action is to be dealt with or regarding the conduct of any legal proceeding; and

66.8.3 the Contractor shall not compromise the Authority's position in any way whatsoever by making statements or admissions (other than in accordance with the Authority's instructions) and shall do nothing which could prejudice the defence of any such claim or action or threatened claim or action.

66.9 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 for any work carried out by the Contractor together with any costs unavoidably incurred by the Contractor, including but limited to any breakage costs in complying with the Authority's instructions under Clause 66.6.

67. Authority Step-In

67.1 In this clause 67 references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority.

67.2 If the Authority believes it needs to take action in connection with the Services due to the matters specified in clause 66.2, then the Authority shall be entitled to take action in accordance with clauses 67.4 and 67.5.

67.3 If the Authority has stepped into this Contract pursuant to clause 67.2, the provisions of clause 67.9 shall apply.

67.4 If the Authority reasonably believes that it needs to take action in connection with the Services;

67.4.1 because a serious risk exists to the health or safety of persons or property or to the environment, and/or

67.4.2 to discharge a statutory duty; and/or

67.4.3 because the Authority invokes clause 67, and/or

67.4.4 because a Contractor Default has occurred,

then the Authority shall be entitled to take action in accordance with clauses 67.5 and 67.6.

67.5 If clause 67.4 applies and the Authority wishes to take action, the Authority's Representative shall notify the Contractor's Representative of the following:

67.5.1 the action it wishes to take;

67.5.2 the reason for such action;

67.5.3. the date it wishes to commence such action;

67.5.4. the time period which it believes shall be necessary for such action; and

67.5.5. to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action as being taken.

67.6 Following service of such notice, the Authority shall take action as notified under clause 67.5 and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

Effect of Step-In on Contractor Failure of Performance

67.7 If the Required Action is taken as a result of a Contractor Default then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Services:

67.7.1 the Contractor shall be relieved from its obligations to provide such parts of the Services; and

67.7.2 in respect of the period in which the Authority is taking Required Action, the Contract Price due from the Authority to the Contractor shall be adjusted accordingly and the Contractor shall pay to the Authority any reasonable costs incurred for the Services provided on a like for like basis in the Required Action to the extent costs are in excess of the Contractor had been providing the Services affected by the Required Action.

67.8 The Authority's right to take any Request Action for Contractor Default under Condition 67 does not waive the Authority's right to terminate in accordance with clause 51 (Failure of Performance).

Effect of Step-In Without Contractor Failure of Performance

67.9 Subject to clause 67.10, if the Required Action is taken other than as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

67.9.1 the Contractor shall be relieved from its obligations to provide such part of the Services; and

67.9.2 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 (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Contract Price 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 Services affected by the Required Action in full over that period.

Authority Step-Out

67.10 Subject to the mutual agreement of a reasonable notice period of no more than twelve (12) weeks, the Authority's Representative may notify the Contractor's Representative that the Authority wishes to cease the Required Action and the date, subject to the notice period provisions above, on which it intends to cease the Required Action.

67.11 On the date on which the Required Action ceases:

67.11.1 the Authority will be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required other than its obligations to pay the Contractor pursuant to this clause 67; and

67.11.2 the Contractor shall resume all or any part of the Services which were the subject of the Required Action.

68. Recourse to Public Funds

68.1 The Contractor shall at times perform its obligations under this Contract at its own risk and without recourse to Government or other public funds or guarantees now or in the future, save with the prior written agreement of the Authority's Representative.

68.2 The Contractor confirms that it has not applied and has no intentions (as at the date of this Contract) if applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations under this Contract. If the Contractor is or becomes entitled to apply for any such grants or funding in relation to its obligations under this Contract, it shall inform the Authority's Representative and obtain its consent before submitting the relevant application. The Authority's agreement to the Contractor's application will be given on condition that, should the Contractor receive any such grant or funding, the payments made by the Authority to the Contractor in accordance with the Contract will be reduced by the amount of the grant or funding.

69. Independent Contractor

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

69.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority, and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

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

70. Public Relations and Publicity

70.1 The Contractor shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not:

70.1.1. communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project;

70.1.2. photograph or film in or upon any Establishment;

70.1.3. erect or exhibit on any part of the Establishment any signs or trade boards; or

70.1.4. exhibit or attach to any part of the Establishments any notice or advertisement,

unless the Authority's Representative has given prior written approval or as otherwise required to comply with the Law.

71. Waiver

71.1 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

71.2 No waiver in respect any right or remedy shall operate as a waiver in respect of any other right or remedy and nor shall it amend, delete or add to terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

72. Counterparts

72.1 This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

73. Freedom of Information

73.1 The Contractor shall, so far as matters involve the Contractor or related information, facilitate the Authority's compliance with the Freedom of Information Act 2000, the Data Protection Act 1998, the Environmental Information Regulations 2004 and any other applicable Legislation governing access to information (the "FOI Legislation").

73.2 The Contractor acknowledges that, in order to be compliant with the FOI Legislation, the Authority may be obliged to provide information, on request, to third parties that relates to this Contract and/or any part of the preceding tender process.

73.4 Notwithstanding anything in this Contract to the contrary, including the obligations of confidentiality imposed on the Parties pursuant to DEFCON 531 (Disclosures of Information), if the Authority receives a request for information falling within the scope of the FOI Legislation, the Authority shall, subject to clause 73.4, be entitled to disclose all information (in whatever form) as necessary in order to ensure its compliance with the FOI Legislation (and in this regard the Authority's decision as to whether it is necessary to disclose such information to ensure compliance shall be final and binding on the Contractor).

73.5 Prior to disclosing any information the Authority believes to be the Contractor's commercially sensitive information, the Authority shall consult with the Contractor as to the proposed disclosure and subsequently shall notify the Contractor of its decision whether or not to disclose the information in question.

73.6 The Authority shall not liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any information falling within the scope of the FOI Legislation or as otherwise disclosed by the Authority as permitted under clause 73.3.

74. Entire Agreement

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

75. Mitigation

75.1 Each of the Authority and Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other Party of this Contract.

76. Risk Management

76.1 It shall be the responsibility of the Contractor to ensure that a Risk Register is supplied to the Authority to cover all potential risks associated with the Contract. The Risk Register shall be a live evolving document and shall clearly demonstrate probability and impact ratings and mitigation action. There is a requirement for the Risk Register to be further developed during the Implementation Phase of the Contract and maintained and updated throughout the period of the Contract.

77. Health and Safety at Work Act (HASWA) 1974 and the Management of Health and Safety at Work Regulations (MHSWR) 1999

77.1 The Contractor shall comply with the HASWA 1974 and MHSWR 1999 and the approved Code of Practice.

Crown Exemption and External Health & Safety Advice

77.2 The Contractor shall not assume any Crown exemption, as may be applied in the interests of national security, will extend to the Contractor unless the Authority's Representative assigned to the Contract provides formal written approval.

77.3 The Contractor shall consult the Authority in the appointment of any external Health & Safety Adviser, if the Authority's specialist knowledge is deemed appropriate; the Authority shall retain the right to appoint an Authority Health and Safety Adviser in preference, at the Authority's expense.

Personal Protective Equipment

77.4 Personal Protective Equipment (PPE) is defined as all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work, which protects them against one or more risks to their health and safety, and any addition or accessory designed to meet that objective. All PPE Products must carry a CE mark.

77.5 The Contractor shall comply with the Personal Protective Equipment at Work Regulations 1992.

77.6 Except where expressly provided for at Schedule 18 (Government Furnished Assets) the responsibilities of the Contractor in respect of the provision of PPE shall include but not be limited to:

77.6.1 The supply of PPE for use during the provision of Services wherever there are risks To health and safety that cannot be adequately controlled in other ways;

77.6.2 A list of PPE to be supplied and the tasks for which each item shall be utilised;

77.6.3 Assessment of PPE to ensure suitability for task;

77.6.4 Suitable maintenance and storage of PPE;

77.6.5 Provision of instructions for safe use of issued PPE;

77.6.6 Correct usage of PPE by employees;

77.7. These responsibilities shall be carried out in accordance with Schedule 11 (Contractor Management Plan).

78. Placement of Orders

78.1 Except where authorised under clause 79 (Use of the Government Procurement Card (GPC)) the Contractor shall not place or clause to be placed any orders with external suppliers or otherwise incur liabilities in the name of the Authority or any representative of the Authority.

79. Use of the Government Procurement Card (GPC)

(The use of the GPC will be subject to a separate agreement and subject to a business need. Should the facility be granted the following conditions will apply)?

79.1 The Contractor is permitted to use the Authority's GPC to obtain stores and services that are the Authority's responsibility to supply that are either not available or, not available in the timeframe required, from the Authority's normal channels. Any purchasing action undertaken by the Contractor in this way shall be subject to the Authority's Low Value Purchasing Regulations JSP 332.

79.2 The Contractor shall ensure that where the GPC is issued to any of their employees, their contracts of employment are amended to reflect their use of the GPC. The Contractor shall also ensure that their staffs are made aware that they are only authorised to use the Authority's GPC in accordance with the personal financial and commercial delegation letters that will be issued to them by the Authority.

79.3 The Contractor's GPC holders shall attend the GPC cardholder training, which in most instances will comprise a computer based training course and which will be made available on site via the Authority's GPC Manager.

79.4 The GPC Cardholder(s) shall comply with the Authority's verification and reconciliation procedures detailed in the GPC cardholder training course. All GPC transactions will be subject to retrospective financial scrutiny by the Authority in accordance with clause 79.5 below.

79.5 All records and individual purchases are to be retained for a period of two years (from the date of final payment) and are to be made available for financial and requirement scrutiny by the Authority.

79.6 Under no circumstances shall the GPC be used to procure items that are the Contractor's responsibility to supply under the terms of this or any other MOD contract.

79.7 The Contractor shall indemnify the Authority against misuse of the Authority's GPC by any of its employees.