



Ministry  
of Defence



**MINISTRY OF DEFENCE,  
DEFENCE EQUIPMENT & SUPPORT**

Tender Number: TSSP/114

Description: Joint Command and Staff Trainer (JCAST)

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1. SCHEDULE OF REQUIREMENTS

Name and Address of Tenderer	MINISTRY OF DEFENCE	Tender No  <b>TSSP/114</b>
	Schedule of Requirements for  <b>JOINT COMMAND AND STAFF TRAINER (JCAST)</b>	
Issued With  <b>DEFFORM 47</b>	On	Previous Contract No. TSSP/054  Not Applicable

Table 1 – Requirements

Item Number	Reference	Description	Quantity	Notes to Supplier	Unit Price (£)	Price All £ (ex-VAT)
1		Core Service – Year 1 - Provision of a Joint Command and Staff Trainer from 08/07/2020 to 07/07/2021 in accordance with the Statement of Requirements at Annex A.	1	Firm Price		
2		Core Service – Year 2 - Provision of a Joint Command and Staff Trainer from 08/07/2021 to 07/07/2022 in accordance with the Statement of Requirements at Annex A.	1	Firm Price		
3		Core Service – Year 3 - Provision of a Joint Command and Staff Trainer from 08/07/2022 to 07/07/2023 in accordance with the Statement of Requirements at Annex A.	1	Firm Price		
4		Core Service – Year 4 - Provision of a Joint Command and Staff Trainer from 08/07/2023 to 07/07/2024 in accordance with the Statement of Requirements at Annex A.	1	Firm Price		



**Table 2 – Options**

Item Number	Reference	Description	Quantity	Notes to Supplier	Unit Price (£)	Price All £ (ex-VAT)
5		Option 1 – Core Service - Year 5 - Provision of a Joint Command and Staff Trainer from 08/07/2024 to 07/07/2025 in accordance with the Statement of Requirements at Annex A	1	Fixed Price Subject to VOP (Condition 4.5)		
6		Option 2 – Core Service - Year 6 - Provision of a Joint Command and Staff Trainer from 08/07/2025 to 07/07/2026 in accordance with the Statement of Requirements at Annex A	1	Fixed Price Subject to VOP (Condition 4.5)		
7		Option 3 – Removal of Observations Tool from Core Service Year 1 – 20/21	1	Fixed Price Subject to VOP (Condition 4.5)		
8		Option 4 – Removal of Reporting Tool from Core Service Year 1 – 20/21	1	Fixed Price Subject to VOP (Condition 4.5)		
9		Option 5 – Removal of DXP Tool from Core Service Year 1 – 20/21	1	Fixed Price Subject to VOP (Condition 4.5)		
10		Option 6 – Removal of Observations Tool from Core Service Year 2 – 21/22	1	Fixed Price Subject to VOP (Condition 4.5)		
11		Option 7 – Removal of Reporting Tool from Core Service Year 2 – 21/22	1	Fixed Price Subject to VOP (Condition 4.5)		
12		Option 8 – Removal of DXP Tool from Core Service Year 2 – 21/22	1	Fixed Price Subject to VOP (Condition 4.5)		
13		Option 9 – Removal of Observations Tool from Core Service Year 3 – 22/23	1	Fixed Price Subject to VOP (Condition 4.5)		
14		Option 10 – Removal of Reporting Tool from Core Service Year 3 – 22/23	1	Fixed Price Subject to VOP (Condition 4.5)		
15		Option 11 – Removal of DXP Tool from Core Service Year 3 – 22/23	1	Fixed Price Subject to VOP (Condition 4.5)		
16		Option 12 – Removal of Observations Tool from Core Service Year 3 – 23/24	1	Fixed Price Subject to VOP (Condition 4.5)		
17		Option 13 – Removal of Reporting Tool from Core Service Year 3 – 23/24	1	Fixed Price Subject to VOP (Condition 4.5)		
18		Option 14 – Removal of DXP Tool from Core Service Year 3 – 23/24	1	Fixed Price Subject to VOP (Condition 4.5)		
19		Option 15 – Removal of Observations Tool from Core Service Year 3 – 24/25	1	Fixed Price Subject to VOP (Condition 4.5)		
20		Option 16 – Removal of Reporting Tool from Core Service Year 3 – 24/25	1	Fixed Price Subject to VOP (Condition 4.5)		

21		Option 17 – Removal of DXP Tool from Core Service Year 3 – 24/25	1	Fixed Price Subject to VOP (Condition 4.5)		
22		Option 18 – Removal of Observations Tool from Core Service Year 3 – 25/26	1	Fixed Price Subject to VOP (Condition 4.5)		
23		Option 19 – Removal of Reporting Tool from Core Service Year 3 – 25/26	1	Fixed Price Subject to VOP (Condition 4.5)		
24		Option 20 – Removal of DXP Tool from Core Service Year 3 – 25/26	1	Fixed Price Subject to VOP (Condition 4.5)		
25		Option 21 – Lessons Learned Capability Year 1 – 20/21	1	Fixed Price Subject to VOP (Condition 4.5)		
26		Option 22 – Lessons Learned Capability Year 2 – 21/22	1	Fixed Price Subject to VOP (Condition 4.5)		
27		Option 23 – Lessons Learned Capability Year 3 – 22/23	1	Fixed Price Subject to VOP (Condition 4.5)		
28		Option 24 – Lessons Learned Capability Year 4 – 23/24	1	Fixed Price Subject to VOP (Condition 4.5)		
29		Option 25 – Lessons Learned Capability Year 5 – 24/25	1	Fixed Price Subject to VOP (Condition 4.5)		
30		Option 26 – Lessons Learned Capability Year 6 – 25/26	1	Fixed Price Subject to VOP (Condition 4.5)		

\*Schedule of Requirement to be delivered in accordance with the Statement of Requirement (SOR) at Annex A and all accompanying appendices.

## 2. GENERAL CONDITIONS

### 2.1 DEFCONS

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

- For the purposes of this Contract, paragraph 3 of DEFCON 126, any information request under an international collaboration agreement would be made available by the Contractor within 30 days of the request.

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

- For the purposes of paragraph 1(e), reference to 'special conditions of Contract' shall be taken to mean the narrative conditions of the Contract.

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

- For the purposes of paragraph 1 of DEFCON 503, the duly authorised representatives are:
  - (a) for the Authority, the Commercial Manager identified at Box 1 of the DEFFORM 111 (the Appendix 1 to the Contract) or their authorised representative.

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

DEFCON 516 (Edn.04/12) – Equality

DEFCON 518 (Edn.02/17) – Transfer

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

DEFCON 526 (Edn.08/02) – Notices

DEFCON 527 (Edn.09/97) – Waiver

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

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

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

DEFCON 531 (Edn. 11/14) – Disclosure Of Information

DEFCON 532B (Edn.05/18) – Protection of Personal Data (where personal data is being processed on behalf of the Authority)

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.12/18) – Change of Control of Contractor

DEFCON 625 (Edn.10/98) – Co-Operation On Expiry of Contract

DEFCON 646 (Edn.10/98) – Law and Jurisdiction (Foreign Suppliers)

- The Contractor's attention is drawn to paragraph 5 of DEFCON 646. The Contractor shall, within one month of Contract award, notify the Authority's Commercial Manager (see Box 1 of the DEFFORM 111) of the details of its appointed agents in England and Wales.

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

- For the purposes of this Contract, the written notice period required for termination for convenience by the Authority will be at least Sixty (60) business days.

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

DEFCON 675 (Edn 09/19) – Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)

DEFCON 678 (Edn 09/19) – SME Spend Data Collection

- The Contractor's attention is drawn to paragraph 2 of DEFCON 678. The Contractor shall by 30<sup>th</sup> June each year during the Contract Period at no additional cost, charge and expense to the Authority provide to the Authority the information identified in DEFFORM 139 (Annex W)

DEFCON 697 (Edn 07/13) – Contractors On Deployed Operations

## 2.2 DEFINITIONS AND INTERPRETATIONS

Notwithstanding, and in addition to, the provisions contained in DEFCON 501 (Edn.11/17), the following expressions shall, in the Contract, have the meaning hereby respectively assigned to them, except where the context requires otherwise.

**“Authority’s Commercial Manager”** means the post named in Box 1 of the Appendix to Contract (DEFFORM 111).

**“Authority’s Project Manager”** means the post named in Box 2 of the Appendix to Contract (DEFFORM 111).

**“Authority’s Representatives”** means the Authority’s officers, directors, employees, and advisers or agents.

**“Background IPR” or “Background Intellectual Property Rights”** means all Intellectual Property Rights, including patents for any inventions, not generated in the performance of the work under the Contract”

**“Build Standard”** means the build standards agreed by the Parties as part of Design Acceptance.

**“Change Proposal”** means a proposed change to the Contract, managed in accordance with the process in Condition 2.15 of this Contract.

**“Contract Award”** means the date in which the Contract is signed for the JCAST Programme.

**“Contract Effective Date”** means the date on which the offer of Contract has been accepted by the Contractor.

**“Contract Work Breakdown Structure”** decomposes the Contract work scope into smaller units and provides the basis for planning, budgeting, scheduling, cost accumulation, reporting (internal and external), and data summation on the Contract.

**“Contractor Commercially Sensitive Information”** shall mean the information listed in the Contractor Commercially Sensitive information at Annex O. This information will be reviewed and agreed with the Authority.

**“Critical Design Review”** means the formal review to validate the final design of the JCAST System. Details of the Critical Design Review are in the Statement of Requirement, at Annex A to the Contract and all accompanying appendices.

**“Critical sub-contractor or critical sub-contractor”** means a sub-contractor that is key to the success of the project.

**“Design Acceptance”** means the Acceptance of the Contractors Design at Critical Design Review of the ITEAP.

**“Foreground IPR” or “Foreground Intellectual Property Rights”** means all Intellectual Property Rights, including patents, for any inventions generated in the performance of work under the Contract, and patents for any inventions conceived out of the technical requirements of the Contract if these have been first enabled in the performance of work under the Contract.

**“Good Industry Practice”** means in relation to any part of the performance of the Contract and related circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Contractor engaged in the same type of undertaking under the same or similar circumstances.

**“Interface Control Document(s)”** means the documents(s) issued to describe the interface between two sub-systems or systems within or external systems.

**“JCAST System”** means the equipment and support solution that meets the requirements as specified in the SRD.

**“Key Performance Indicators”** means the commercial mechanism set out in Annex C to the Contract – Key Performance Indicators.

**“Long Lead Items”** means those Articles which are required for the Manufacture Phase, but which the Authority has authorised to be procured during the Demonstration Phase to meet the Delivery Schedule at Appendix 1 to the Schedule of Requirements.

**“Party”** means either the Contractor or the Authority.

**“Prime Contractor”** means the “Contractor”, who has responsibility for performance of the Contract.

**“Statement of Work”** means the Contractor’s methodology for carrying out the work under this Contract.

**“Sub-contract” or “sub-contract”** means a sub-contract of any tier.

## **2.3 DOCUMENTATION & PRECEDENCE**

**2.3.1** The Contractor shall check all Authority supplied documentation and immediately notify the Authority of any discrepancy, inconsistency or error.

**2.3.2** Should there be any conflict in the Contract documentation, the order of precedence stated shall be as follows:

- 1) Narrative Conditions of the Contract.
- 2) DEFCONs of the Contract and any documents expressly called up by these
- 3) Schedule of Requirements DEFFORM 110
- 4) System Requirements Document at Appendix 1 to Annex A to the Contract;
- 5) Statement of Requirement and all supporting documentation and appendices at Annex A to the Contract;
- 6) Integrated Technical Evaluation Assessment Plan (ITEAP) at Appendix 3 to Annex A to the Contract;
- 7) Any other documents referenced in the Contract.

**2.3.3** In the event of any conflict in any document, or any conflict between documents with the same order of precedence, the Parties shall agree the proper construction of the documentation. Should the Parties be unable to agree a resolution to the conflict, the matter shall be referred to the dispute resolution procedure in Condition 2.13.

## **2.4 INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)**

**2.4.1** The Contractor shall seek to keep to the minimum the extent to which the deliverables are subject to United States of America (USA) International Traffic In Arms Regulations (ITAR).

**2.4.2** Where USA nationals or USA sub-contractors are utilised by the Contractor, the Contractor shall ensure that deliverables, information or designs not currently subject to USA ITAR control do not become subject to it.

**2.4.3** The Contractor shall inform the Authority of any proposed change to the Contract where the change will add USA ITAR controlled content to the deliverables and shall not commit to that USA ITAR controlled content without the permission of the Authority. In informing the Authority of the proposed additional USA ITAR controlled content to its deliverables, the Contractor shall inform the Authority of any non-USA ITAR alternatives, and the Contractor's view of the advantages and disadvantages of the solutions.

**2.4.4** The equipment's which are subject to USA ITAR controlled content are listed in Annex L to the Contract (if applicable). The Contractor shall not amend in any way the ITAR equipment listed in the Annex, either by the inclusion of additional items subject to USA ITAR control or otherwise, without the express written permission of the Authority.

## **2.5 SUB-CONTRACTING**

**2.5.1** For the purposes of this Contract and the work to be performed hereunder, the Contractor, is designated as Prime Contractor and shall accordingly be responsible to the Authority, subject to the provisions of this Contract, for the timely, economic and proper execution of the work under the Contract as described in the Schedule of Requirements (SoR). The Contractor's responsibilities shall apply equally to work carried out by sub-contractors in respect of the requirements of the Contract. Nomination of a sub-

contractor does not relieve the Contractor of his responsibilities. The Contractor shall make such arrangements with his sub-contractor, and they with theirs, to ensure that the sub-contracted elements are satisfactory and meet the requirements of the Contract.

**2.5.2** The Contractor shall ensure that the Terms and Conditions of this Contract are reflected in all Sub-Contracts at whatever level to the extent necessary to enable the Contractor to meet his obligations to the Authority under the Contract.

**2.5.3** Details of the sub-contractors for the Contract are to be provided to the Authority prior to Contract Award. Any subsequent changes shall be notified to the Authority throughout the life of the Contract. The following information shall be provided:

- a) the identity of the proposed Sub-contractor;
- b) the value of the proposed Sub-contract or amendment and the pricing mechanism on which such value is based;
- c) the proposed Sub-contractor's or existing sub-contractor's current, complete and accurate cost and pricing data;
- d) a description of the supplies or services to be sub-contracted;
- e) confirmation that the relevant provisions of this Contract have been flowed down into the proposed sub-contract or amendment to an existing Sub-contract;
- f) the reasons for termination and the alternative arrangements proposed to be put in place by the Contractor in relation to the relevant activities;
- g) information to allow the Authority to assess any interest of national security or operational sovereignty.

**2.5.4** The Authority shall have 10 (ten) business days from receipt of the information in Condition 2.5.3 to raise any concerns it may wish to raise about the proposed change to the Contract. Any concerns raised by the Authority shall be discussed between the Contractor and the Authority prior to any changes being made. The Authority shall be entitled by notice in writing to instruct the Contractor not to change, where the concerns over changes are as per Condition 2.5.3.g.

**2.5.5** Notwithstanding any concerns that the Authority may raise regarding changes to critical sub-contractors, the Contractor shall remain responsible and liable to the Authority at all times for the performance of its obligations under the Contract.

**2.5.6** Informing the Authority of the award of a sub-contract or an amendment to a sub-contract shall not constitute the Authority's agreement:

- a) to the acceptability of any terms and conditions of the proposed sub-contract or amendment which could not in the reasonable opinion of the Authority be ascertained from the information provided by the Contractor pursuant to Condition 2.5.3 above;
- or
- b) relieve the Contractor of any responsibility for performing those aspects of the Contractor's obligations under this Contract which form the subject matter of the proposed sub-contract or amendment.

**2.5.7** The obligations of the Contractor under this Contract shall not be affected or reduced in any way by the Authority entering into any agreement directly with a sub-contractor or proposed sub-contractor in connection with intellectual property rights or otherwise and/ or by the Authority giving its approval to the pricing or other terms of any sub-contract or proposed sub-contractor to the identity of any sub-contract or proposed sub-contractor.



**2.5.8** The Contractor shall ensure that the sub-contracts contain provisions which are substantially the same as the provisions in this Contract to the extent relevant to the sub-contract and necessary to enable the Contractor to fully meet its obligations under this Contract, and the Contractor shall ensure the sub-contractors comply with such provisions.

**2.5.9** Without prejudice to the generality of Condition 2.5.8 above, the Contractor shall as a minimum ensure that the provisions of this Contract specified in Conditions 2.5.9.a to 2.5.9.g below are incorporated in all Critical Sub-contracts so as to enable such provision to operate as between the Contractor and each relevant Sub-contractor (or as between relevant Sub-contractors of lower tiers as applicable) and be enforced by the Contractor (or relevant Sub-contractor as applicable):

- a) Intellectual Property Rights;
- b) Sub-contracting;
- c) Termination;
- d) Variation of Price;
- e) Earned Value Management/Management Information;
- f) Design Authority;
- g) Security Measures;

## **2.6 DESIGN AUTHORITY**

**2.6.1** The Contractor shall also be known as the JCAST Design Authority (JCAST DA) for all of the Articles delivered under the Contract and shall fulfil this role in accordance with DEFSTAN 05-10 Part 0 Issue 5. Without prejudice to the generality of the foregoing as the JCAST DA, the Contractor shall prepare and maintain all design specifications and manufacturing records in accordance with the terms and conditions of the Contract and provide the appropriate JCAST sub-system and interface data in the form of a technical data pack which is described in the Contract Data Requirements List at Annex K to the Contract.

**2.6.2** The Contractor shall make available to the Authority drawings, design data, calculations and reports of tests or demonstrations in accordance with the Contract deliverables articulated within the Statement of Requirement (Annex A to the Contract) so that questions which may affect the safety, and environmental impact or performance of the completed equipment may be discussed at an early stage. If requested by the Authority, the Contractor shall plan for such tests or demonstrations to be witnessed by the Authority or his authorised representatives at the discretion of the Authority.

**2.6.3** The Authority shall have the right, at its sole discretion, to transfer to another party or to take in-house the role of the JCAST DA. Reasons for transferring the role include, without limitation:

- a) The Contractor is in breach of its obligations relating to its role as Design Authority;
- b) The Contractor is demonstrating poor performance in conducting the role.

**2.6.4** The Contractor shall maintain the ability to transfer the role within an agreed timeline with the Authority, and shall provide all required assistance to facilitate the transfer. Such transfer shall be on fair and reasonable commercial terms.

**2.6.5** Where there is transfer of Design Authority, a Contract amendment as per DEFCON 503 (Formal Amendments to Contract) shall be issued by the Authority to reflect the reduced scope and risk.

## 2.7 SECURITY MEASURES (WITH SECURITY ASPECTS LETTER)

For the purpose of DEFCON 659A, the "Secret Matter" of the Contract shall be as defined in the Authority's Security Aspects Letter (SAL) dated 14/03/2019 at Annex Q to the Contract, with which the Contractor is required to comply. Any changes in these classifications will be notified by the Authority with a formal amendment.

## 2.8 SECURITY CONDITIONS

### 2.8.2 Security Grading

All aspects associated with this Contract are classified OFFICIAL. Some aspects are more sensitive and are classified to a higher level and are outlined within the Security Aspects Letter (Annex Q). The Security Aspects Letter, issued by the Authority defines the security classification of information that is furnished to the Contractor, or which is to be developed by it, under this Contract. The Contractor shall mark all documents which it originates or copies during the Contract clearly with the appropriate classification. However, the Contractor is not required to mark information/material related to the Contract which is only OFFICIAL.

### 2.8.3 Official Secrets Acts

The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911-1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular. The Contractor shall take all reasonable steps to make sure that all individuals employed on any work in connection with the Contract (including sub-contractors) have notice that these statutory provisions, or any others provided by the Authority, apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

### 2.8.4 Protection of Information

- a) The Contractor shall protect all information provided to it or generated by it in accordance with the requirements detailed in this condition and any other conditions that may be specified by the Authority. The Contractor shall take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.
- b) The Contractor shall apply Industry Security Notice (ISN) 2017/01 requirements to every industry owned IT and communication system used to store, process or generate MOD information including those systems containing OFFICIAL and/or OFFICIAL-SENSITIVE information. ISN 2017/01 details Defence Assurance and Risk Tool (DART) registration, IT security accreditation processes, risk assessment and risk management requirements. The ISN is available at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594320/DART\\_ISN\\_-\\_V2\\_3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594320/DART_ISN_-_V2_3.pdf)

**2.8.5** All information shall be protected in a manner to avoid unauthorised access. The Contractor shall take all reasonable steps to prevent the loss, compromise or inappropriate access of the information or from deliberate or opportunist attack.

**2.8.6** All material including documents, media and other material shall be physically secured to prevent unauthorised access. When not in use documents/material shall be handled with care. As a minimum, when not in use, OFFICIAL-SENSITIVE material shall be stored under lock and key and in a lockable room, cabinets, drawers or safe and the keys/combinations are themselves to be subject to a level of physical security and control.

**2.8.7** Disclosure of information shall be strictly in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose any of the classified aspects of the Contract detailed in the Security Aspects Letter other than to a person directly employed by the Contractor or sub-Contractor, or Service Provider.

**2.8.8** Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and shall be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with Condition 2.8.29.

### **2.8.9 Access**

- a) Access to information shall be confined to those individuals who have a “*need-to-know*”, have been made aware of the requirement to protect the information and whose access is essential for the purpose of his or her duties.
- b) The Contractor shall ensure that all individuals having access to information have undergone the relevant recruitment checks. Contractors shall apply the requirements of HMG Baseline Personnel Security Standard (BPSS) for all individuals having access to OFFICIAL-SENSITIVE information. Further details and the full requirements of the BPSS can be found at the Gov.UK website:

<https://www.gov.uk/government/publications/government-baseline-personnelsecurity-standard>.

### **2.8.10 Hard Copy Distribution**

- a) Documents shall be distributed, both within and outside company premises in such a way as to make sure that no unauthorised person has access. It may be sent by ordinary post or Commercial Couriers in a single envelope. The words for classification level shall not appear on the envelope. The envelope should bear a stamp or details that clearly indicates the full address of the office from which it was sent.
- b) Advice on the distribution of documents abroad or any other general advice including the distribution of hardware shall be sought from the Authority.

### **2.8.11 Electronic Communication, Telephony and Facsimile Services**

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

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

- b) Details of the CPA scheme are available at:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

**2.8.12** Exceptionally, in urgent cases, OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so and only with the prior approval of the Authority.

**2.8.13** OFFICIAL-SENSITIVE information shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the authority shall require. Such limitations, including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.

**2.8.14** OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the UK and overseas. OFFICIAL-SENSITIVE information may be discussed on fixed and mobile types of telephone within the UK, but not within earshot of unauthorised persons.

**2.8.15** OFFICIAL information may be faxed to recipients located both within the UK and overseas, however OFFICIAL-SENSITIVE information may be faxed only to UK recipients.

## 2.8.16 Use of Information Systems

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

**2.8.17** The Contractor shall ensure the 10 Steps to Cyber Security are applied in a proportionate manner for each IT and communications system storing, processing or generating MOD UK information/data up to SECRET/NATO SECRET classification. The 10 Steps to Cyber Security are available at:

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

**2.8.18** The Contractor shall ensure competent personnel apply 10 Steps to Cyber Security.

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

**2.8.20** Within the framework of the 10 Steps to Cyber Security, the following describes the minimum-security requirements for processing and accessing information on IT systems.

- a) Access Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “*least privilege*” will be applied to System Administrators. Users of the IT System - Administrators should not conduct ‘*standard*’ User functions using their privileged accounts.
- b) Identification and Authentication (ID&A). All systems shall have the following functionality:
  - (1) Up-to-date lists of authorised users.
  - (2) Positive identification of all users at the start of each processing session.
- c) Passwords. Passwords are part of most ID&A, Security Measures. Passwords shall be ‘strong’ using an appropriate method to achieve this, for example including numeric and “*special*” characters (if permitted by the system) as well as alphabetic characters.
- d) Internal Access Control. All systems shall have internal Access Controls to prevent unauthorised users from accessing or modifying the data.
- e) Data Transmission. Unless the Authority authorises otherwise, OFFICIAL-SENSITIVE information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in Condition 2.8.11 above.
- f) Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.
- g) All relevant procedures shall be followed when handling any SECRET/NATO SECRET data.
  - (1) The following events shall always be recorded:
    - (a) All log on attempts whether successful or failed,
    - (b) Log off (including time out where applicable),
    - (c) The creation, deletion or alteration of access rights and privileges,
    - (d) The creation, deletion or alteration of passwords,
  - (2) For each of the events listed above, the following information is to be recorded:
    - (a) Type of event,
    - (b) User ID,
    - (c) Date & Time,
- h) Device ID, the accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.
- i) Integrity & Availability. The following supporting measures shall be implemented:

- “Unauthorised access to this computer system may constitute a criminal offence”*

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## 2.8.25 Sub-Contracts

- a) The Contractor may sub-contract any elements of this Contract to Subcontractors within the United Kingdom without notifying the Authority. When subcontracting to a Sub-contractor located in the UK the Contractor shall ensure that these Security Conditions shall be incorporated within the Sub-contract document. The prior approval of the Authority shall be obtained should the Contractor wish to Sub-contract any OFFICIAL-SENSITIVE OR SECRET/NATO SECRET elements of the Contract to a Sub-contractor located in another country. The first page of Appendix 5 (MOD Form 1686 (F1686)) of the Security Policy Framework Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 can be found at Appendix 5 at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/367494/Contractual\\_Process\\_-\\_Appendix\\_5\\_form.doc](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc).

- b) If the Sub-contract is approved, the Contractor shall incorporate these Security Conditions within the Sub-contract document.

### 2.8.26 Publicity Material

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

### 2.8.27 Private Venture

Any defence related private venture derived from the activities of this Contract is to be formally assessed by the Authority for determination of its appropriate classification. Contractors are to submit a definitive product specification for PV Security Grading in accordance with the requirement detailed at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/621437/20170518-PV-Ex\\_Guidance\\_Document-V3-O.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621437/20170518-PV-Ex_Guidance_Document-V3-O.pdf)

### 2.9.28 Promotions and Potential Export Sales

Contractors wishing to promote, demonstrate, sell or export any material that may lead to the release of information or equipment which is classified (including classified tactics, training or doctrine related to equipment) are to obtain the prior approval of the Authority utilising the MOD Form 680 process, as identified at:

<https://www.gov.uk/mod-f680-applications>.

### 2.8.29

### 2.8.30 Interpretation/Guidance

- a) Advice regarding the interpretation of the above requirements should be sought from the Authority.
- b) Further requirements, advice and guidance for the protection of MOD information at the level of OFFICIAL-SENSITIVE may be found in Industry Security Notices at:  
<https://www.gov.uk/government/publications/industry-security-notices-isns>.

### 2.8.31 Audit

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

## 2.9 CHANGE OF CONTROL OF CONTRACTING ENTITY

**2.9.1** The Authority's strategy for the supply of Contractor logistics support and Post Design Services for JCAST may be subject to change during the period of this Contract and this could result in the need for the Authority to consider novating the Contract to a third party. If the Authority decides that it needs to consider novating the Contract to a third party then it will give the Contractor a minimum of twelve (12) months' notice of its intention and will meet the Contractor to discuss the novation within the first three (3) months of this period of notice. The Contractor agrees that it will not unreasonably withhold agreement to any proposed novation to a third party.

**2.9.2** During the period of notice, the parties shall agree a limit of liability that may be required in the event of any incident or event, that is proven to be the fault of either of the new Contracting entity or the Contractor, which requires a halt to production and delivery of any of the SOR Items.

**2.9.3** Any change of Contracting entity shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to those detailed in the existing Contract. The prices recorded within the terms and conditions shall also remain unchanged in the event of a change of control of Contracting entity.

**2.9.4** The Contractor shall not be required to submit any advice or information which would be in breach of either any pre-existing non-disclosure agreement or any regulations governing the supply of information to third parties.

**2.9.5** For the purposes of this Condition 'Control' shall mean the power of a person or organisation to manage the Contract in accordance with the conditions of Contract;

i. by means of implementing any remedial action required as a result of a breach of the terms and conditions of the Contract;

or

ii. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contract.

**2.9.6** For the purposes of this Contract and only in the event of a change of Contracting entity, any references to "MOD", the "Authority" and/or the "Secretary of State for Defence" shall equally mean the "Contracting entity's contractor."

## **2.10 MATERIAL BREACH & TERMINATION**

**2.10.1** In addition to its rights under DEFCON 514, the Authority shall have the right to terminate this Contract in the event of:

- a) A material breach;
- b) A persistent breach as defined in Annex C of the Contract;
- c) Any failure by the Contractor to fully, in the manner and within the timescale specified in the Contract, supply any requirement as identified in the Contract; and
- d) Breach of the requirements of DEFCON 68 (Supply of Data for Hazardous Articles, Materials and Substances), DEFCON 515 (Bankruptcy and insolvency), DEFCON 518 (Transfer), DEFCON 520 (Corrupt Gifts and Payments of Commission), and DEFCON 659A (Security Measures).

**2.10.2** The Authority retains the right to issue a notice (a 'Rectification Notice') to the Contractor asking the Contractor to remedy a material breach, and any such notice will detail any breach in accordance with Condition 2.10.1.

**2.10.3** If the Authority has elected to issue a Rectification Notice in accordance with Condition 2.10.2., within 20 (twenty) business days (or such longer period as the Authority may specify) of the receipt of the Rectification Notice, the Contractor shall make a rectification proposal to the satisfaction of the Authority which shall, as a minimum, specify:

- a) The extent to which the Contractor proposes to rectify the contractor default;
- b) Details of all measures the Contractor proposes to take to rectify the contractor default, and



- c) The timescale within which the Contractor proposes to rectify the contractor default.

**2.10.4** If the Authority receives the Contractor's rectification proposal under Condition 2.10.3 within 20 (twenty) business days (or such longer period as the Authority may specify) of the receipt by the Contractor of the Rectification Notice, the Authority shall consider the proposal and may accept, reject or amend the proposal.

**2.10.5** If the Authority accepts or amends the Contractor's rectification proposal under 2.10.4, the Contractor shall rectify the Contractor default in accordance with the proposal as accepted, and the Contractor shall take such action without imposing any additional charge on the Authority.

**2.10.6** The Authority shall have the right (but not the obligation) to terminate the Contract by providing notice in writing, if,

- a) The Contractor fails to make a rectification proposal or fails to implement the rectification proposal in accordance with Condition 2.10.3, within the timescale and in the manner agreed in the rectification proposal, or
- b) The Contractor does not take the remedial action as the Authority has specified in accordance with Condition 2.10.4; or
- c) The Authority and the Contractor cannot agree a mutually acceptable rectification proposal.

**2.10.7** The termination of the Contract shall be without prejudice to the rights, obligations and liabilities of the Parties which have accrued or become due prior to the date of termination.

## **2.11 PARENT COMPANY GUARANTEE**

**2.11.1** Where the Contractor has provided a Parent Company Guarantee, the Parent Company Guarantee shall remain in place for the duration of the Contract.

**2.11.2** Should there be any change in control of the Contractor in accordance with DEFCON 566 (Change of Control of Contractor), the Parent Company Guarantee and the liabilities, undertakings and guarantees therein shall be adopted in full by the new parent company of the Contractor. Where the change in control means there is no parent company to adopt the Parent Company Guarantee, the Parties shall agree a mutually acceptable alternative which meets the intent of the Parent Company Guarantee.

## **2.12 AMENDMENTS TO CONTRACT**

**2.12.1** In addition to the terms of DEFCON 503 only the Authority's Commercial Manager detailed at Box 1 of DEFFORM 111 (or his authorised representative) shall be authorised to vary the terms and conditions of the Contract, including specifications, standards of drawings which form part of the Contract.

## **2.13 DISPUTE RESOLUTION**

**2.13.1** Any dispute or difference or question arising out of or in relation to this Contract between the Contractor and the Authority shall be resolved in accordance with this Condition 2.13 and DEFCON 530 shall be deemed to be amended to the extent it is inconsistent with this Condition 2.13.

**2.13.2** If any dispute, difference or question arises out of the performance of this Contract, then the Parties concerned shall attempt to resolve it between themselves in good faith and to the mutual satisfaction of both Parties in a timely and expeditious manner.

**2.13.3** Any dispute, difference or question shall be referred firstly to the decision of the Training and Simulation Programme (TSSP) Senior Commercial Manager and the Senior Commercial Manager (or

equivalent) of the Contractor or such other persons as the Parties may respectively designate for this purpose from time to time by notice to the other.

**2.13.4** If within 30 (thirty) days the Parties have failed to reach agreement then the dispute, difference or question shall be referred to the decision of the TSSP Team Leader and the Programme Manager of the Contractor or such other persons as the Parties may respectively designate for this purpose from time to time by notice to the other.

**2.13.5** If within 30 (thirty) days after referral of any dispute, difference or question under Condition 2.13.4 above, the Authority and the Contractor have failed to reach agreement, then subject as expressly provided in this Contract, the Parties may seek to resolve the dispute through the use of any Alternative Dispute Resolution ("ADR") procedure on which they may agree. If the Parties choose not to use an ADR procedure, or if the ADR procedure does not resolve the Dispute within a reasonable timescale to the satisfaction of both Parties, the dispute shall be referred to Arbitration in accordance with DEFCON 530.

**2.13.6** For the purposes of DEFCON 530, any arbitration shall take place under the rules of the London Court of International Arbitration (the LCIA Rules) in London in English.

**2.13.7** It is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all Parties to the arbitration.

**2.13.8** Neither Party shall be entitled to suspend performance of the Contract merely by reason of the reference of any dispute to the procedures set out in this Condition or to arbitration.

**2.13.9** Condition 2.13.8 shall be subject to the right for the Authority to withhold payment of the whole or any part of the Contract Price where the Authority, in good faith, disputes that the Contractor has satisfactorily completed any part of the Contract provided that the Authority shall only be entitled to withhold that part of the Contract Price which relates to the disputed performance.

## **2.14 CONTRACT CHANGE PROCEDURE**

**2.14.1** This Condition describes the procedure to be used for implementing changes to the Contract.

**2.14.2** Changes may include, but shall not be limited, to the following:

- a) Changes to deliverables;
- b) Changes to the Schedule of Requirements of the Contract;
- c) Flexing of funding to facilitate the curtailment or expansion of activities being undertaken;
- d) Introduction of new work as a result of the identification of new technologies or the work of other programmes;
- e) Removal of work that is unnecessary to achieve Contract outcomes or for which better value for money can be achieved through a decision to allocate the cost of that work to other Contract outcomes;

**2.14.3** Changes to Contract requirements may be proposed by the Authority, or by the Contractor. For Contractor initiated changes the Contractor shall be responsible for the preparation and submission of a Change Proposal. For Authority initiated changes, the Authority shall submit in writing, details of the change required and the reason for the change.

**2.14.4** For any change identified by either Party as an urgent change, both Parties shall use reasonable endeavours to meet and agree the urgent change as soon as reasonably practicable.

**2.14.5** Any Change Proposal submitted by the Contractor shall contain sufficient information to enable the Authority to make a decision on whether or not to proceed on the proposed change.

**2.14.6** Should the Contractor have insufficient information about the impact of the proposed change they may propose that the Authority allocate funds in order that the Contractor can undertake a study to investigate the potential impact of the proposed change.

**2.14.7** Where a study is required, the Contractor shall not proceed until authority to proceed with the study has been provided by the Authority's Commercial Manager.

**2.14.8** For proposed contractual changes, the Change Proposal submissions shall include a breakdown of all costs and other factors affected by the proposed change. These shall include, but not be limited to:

- a) Breakdown of all pricing of the proposed change;
- b) Programme Schedules;
- c) Statements of Work;
- d) Deliverables;
- e) System Requirements;
- f) Commonality;
- g) Any other input that may result

**2.14.9** The price shall not only include those cost changes directly relating to the change itself but also any consequential cost changes that may arise elsewhere under the Contract. The Authority shall not be liable for any consequential costs that were not identified prior to approval of the Change Proposal Form concerned.

**2.14.10** Where a change has originated from the Authority, the Contractor shall provide in response a proposal in accordance with Condition 2.14.8. No preparation costs shall be allowable for a Contractor originated Change Proposal Form.

**2.14.11** Any changes initiated by the Contractor which are necessary to ensure compliance with the requirements of the Contract shall be the liability of the Contractor.

**2.14.12** In accordance with DEFCON 127 or DEFCON 643, the price submitted in the Change Proposal shall be supported by details of the rationale used to determine the proposed costs, including a detailed breakdown (embracing all levels of the supply chain). If required, the Contractor shall also provide the Authority with full visibility of the costs of any part of the original work to which the proposed change relates.

**2.14.13** All labour rates used shall be those set out in Annex V to the Contract.

**2.14.14** Work in connection with any proposed change shall not commence until the Authority's Commercial Manager (see Box 1 of DEFFORM 111) or his authorised representative formally offers the change as a contract amendment in accordance with the requirements of Condition 2.12 (Amendments to Contract). Any work undertaken or costs incurred in advance of the acceptance of any Change Notice will be entirely at the Contractor's own risk. Once a proposed change has been agreed and a contract amendment to incorporate it has been accepted by the Contractor, then the Contractor shall implement the change in accordance with the duly amended terms and conditions of the Contract.

**2.14.15** The Authority reserves the right to reject or not take forward any proposed change contained in a Change Proposal Form. In the case of rejection or non-adoption the Authority shall give the Contractor reasons for that rejection.

## **2.15 DURATION**

**2.15.1** The Contract shall commence on the Contract Effective Date for the period of 4 years with options to extend for a further 2 years in 1-year increments and shall (unless terminated earlier by the Authority) expire once:

- a) all work required against the Schedule of Requirements Items, and all related deliverables have been completed and accepted by the Authority in accordance with Appendix 3 of Annex A (ITEAP); and/or
- b) all of the Authority's options set out in Schedule of Requirements Items which have been taken up have expired.

**2.15.2** Timely delivery of all deliverables will be in accordance with the Schedule of Requirements.

**2.15.3** The termination of the Contract or its expiry shall not affect the continuation in force of any conditions, DEFCONs and other provisions of the Contract, that are expressly or by implication intended to continue in force after termination or expiration.

## **2.16 CONTRACTOR'S PERSONNEL**

**2.16.1** Key personnel identified in the Statement of Work shall have the appropriate qualifications, experience and competences for this Contract.

**2.16.2** The Contractor shall take all reasonable steps to avoid changes of key personnel assigned for work under the Contract. Except whenever changes are unavoidable or of a temporary nature caused by sickness or other circumstances, the Contractor shall give at least one month's notice, in writing, to the Authority and the provisions of this Condition shall apply to the replacement personnel. The Authority shall have the right, in its sole discretion, to reject any replacement personnel proposed by the Contractor.

## **2.17 AUTHORITY'S REPRESENTATIVES**

**2.17.1** The Authority may engage organisations to assist it with the Contract. In such circumstances these parties (known as "Authority's Representatives") shall be deemed to be approved representatives of the Authority to whom the Contractor shall co-operate fully and provide all reasonable assistance to them in performing the roles and responsibilities assigned to them by the Authority.

**2.17.2** Any Contract placed by the Authority for the services mentioned in Condition 2.17.1 above shall include suitable provisions for the protection of the confidentiality of any information released under the said Contract.

## **2.18 CAPITAL FACILITIES**

**2.18.1** The Contractor shall provide all resources necessary for the purposes of carrying out the requirements of this Contract other than those under Condition 6 – Loans, or those agreed as Government Furnished Assets at Annex L to the Contract.

## **2.19 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) TUPE**

**2.19.1** The TUPE conditions relating to the provision of Employee Information at Contract expiry are specified at Annex V to the Contract terms and conditions.

## **2.20 TASKING PROCEDURE**

**2.20.1** Each task shall be initiated and defined by the use of a TASK AUTHORISATION FORM (TAF) as detailed at Annex B to Contract.

**2.20.2** Except for an “Urgent” task, no work shall be undertaken on the proposed task until the TAF has been authorised by the Authority and accepted by the Contractor.

**2.20.3** Tasks may be proposed by either the Authority or the Contractor. Tasks shall be identified by the TAF sequential serial number allocated by the Authority. The Contractor shall use this reference number, where known, in all communications with the Authority. The Contractor may allocate additional reference numbers for the convenience of their own internal systems. In the case of an urgent task (see below), the TAF shall be prefixed with “URGENT” denoting the urgency.

**2.20.4** The TAF shall define a specific package of work to be undertaken in Part 1(a) with the deliverables and required delivery/completion date.

**2.20.5** The Contractor shall submit a Firm Price quotation, which must be provided with a detailed price breakdown, to include but not limited to, profit rate, overheads and direct costs. Labour rates will be as per those agreed at Annex V and in accordance with DEFCON 127 or DEFCON 643 as appropriate, and a timescale/completion date, which shall remain achievable during the validity of the quotation.

**2.20.6** When a Firm Price has been agreed, the Authority shall authorise the Task by the Offer of Amendment to the Contract. The Offer of Amendment shall reference the TAF reference number and title, completion date and Firm Price as a minimum.

**2.20.7** Acceptance of the Offer of Amendment shall be confirmed on receipt of the signed Deform 10B.

**2.20.8** Milestone Payments - Exceptionally, where a task is of a high value (over £25k) and/or long duration (over 1 year) the Authority may consider the inclusion of a Milestone Payment Plan that shall be agreed against the specific task. Milestone Payment(s) shall only be made against clearly defined milestones. The Contractor's proposed Milestone Payment(s) Plan must be submitted with the Firm Price quotation on the TAF for the Authority's agreement.

**2.20.9** On completion of the Task, the Contractor shall complete and return the completion certificate to the Authority and submit their invoice for the task in accordance with DEFCON 522.

### 3. SPECIFICATIONS, PLANS, ETC

#### 3.1 DEFCONS

DEFCON 16 (Edn. 10/04) – Repair and Maintenance Information

- For the purpose of this Contract, repair and maintenance information identified within the relevant DEFFORM 315 (Annex K to the Contract) will be provided upon request.

DEFCON 19 (Edn. 01/76) – Free User, Maintenance And Supply Of Drawings

- For the purpose of this Contract, the Contractor shall provide information in pursuant of this condition in accordance with Annex K to the Contract (DEFFORM 315)

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

- For the purpose of this Contract, the Contractor shall provide information in pursuant of this condition in accordance with Annex K to the Contract (DEFFORM 315)

DEFCON 68 (Edn. 02/19) – Supply of Data for Hazardous Articles, Materials and Substances

- For the purpose of this Contract, Annex H to the Contract (DEFFORM 68) shall be used to document all Safety Data Sheet (SDS) relating to any Article provided under this Contract.

DEFCON 82 (Edn.11/16) – Special Procedure For Initial Spares

- For the purpose of this Contract, Appendix 4 to Annex A (DEFFORM 82A) shall be used to document all Advanced Spares relating to any Article provided under this Contract.

DEFCON 117 (Edn.10/13) – Supply Of Information For NATO Codification and Defence Inventory Introduction

DEFCON 502 (Edn.05/17) – Specification Changes

DEFCON 595 (Edn.03/19) – Automatic Test Equipment Data Requirements

DEFCON 601 (Edn.04/14) – Redundant Materiel

DEFCON 602B (Edn.12/06) – Quality Assurance (Without Deliverable Quality Plan)

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

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

DEFCON 612 (Edn.10/98) – Loss of Or Damage to the Articles

DEFCON 624 (Edn.11/13) – Use of Asbestos

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

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

DEFCON 645 (Edn.07/99) – Export Potential

DEFCON 658 (Edn.10/17) – Cyber

- For the purpose of the Contract, the Cyber Risk Assessment of this Contract is **MODERATE**

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

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

DEFCON 687A (Edn.07/19) – Provision Of A Shared Data Environment Service

- For the purpose of this Contract, the project description can be found in the JCAST SRD Appendix 1 of Annex A).

DEFCON 687B (Edn.06/01) – Shared Data Environment System Transfer Agreements

### **3.2 PERFORMANCE OF WORK**

**3.2.1** For the entire duration of the Contract, all work under this Contract shall be carried out in accordance with the Statement of Work at Annex A to the Contract and in accordance with the delivery schedule at Appendix 1 of the Schedule of Requirements of the Contract.

**3.2.2** The Authority requirements under this Contract include any work which is necessary to satisfy the System Requirements Document (Appendix 1 to Annex A to the Contract) and all work which (although not mentioned in this Contract) is necessary for the completion of the Contract.

**3.2.3** The Contractor shall not make any alteration to the Statement of Requirement (Annex A to the Contract) unless agreed in writing with the Authority's Project Manager and confirmed by a contract amendment in accordance with Condition 2.12 (Amendments to Contract).

**3.2.4** Except as expressly provided in and without prejudice to the Authority's obligations under Condition 6.2 (Supply of Government Furnished Assets), the Contractor shall be responsible for obtaining all information and data necessary for the carrying out of its obligations under the Contract.

**3.2.5** Unless otherwise expressly specified in the Statement of Requirement (Annex A to the Contract), the Contractor shall not, unless agreed in writing by the Authority, specify or use any materials or equipment which:

- do not conform with British Standards or Codes of Practice where such exist or such other equivalent standards or requirements applicable at the relevant time to projects for armoured military vehicles; and/or
- are generally known to the military engineering industry to be deleterious to health and safety, the performance, physical integrity or the durability of armoured military vehicles or damaging to the environment in the circumstances in which they are specified or used.

### **3.3 SCOPE OF WORK**

**3.3.1** The Scope of Work for this Contract shall encompass all requirements articulated in the terms and conditions of the contract, the Statement of Requirement and all accompanying appendices.

### **3.4 RISK & OPPORTUNITY**

**3.4.1** The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the Parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):

- particular risks and their impact; or
- risk reduction measures, contingency plans and remedial actions

**3.4.2** This shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract. Any risk assessment questionnaire released was or will be issued by the Authority solely on this basis.

### 3.5 RISK MANAGEMENT PROCESS

**3.5.1** The Contractor shall produce and manage the risk reports and processes in accordance with the Statement of Work at Annex A to the Contract, and in accordance with the MDAL / Risk / Opportunity Template (Appendix 8 of Annex A to the Contract). The Risk & Opportunity Register shall be maintained by the Contractor for the duration of the Contract, and shall include all risks in the supply chain including those of their sub-contractors.

**3.5.2** The Contractor shall maintain the joint Risk & Opportunity Register using the appropriate risk management tool and shall make the Risk & Opportunity Register available to the Authority electronically.

### 3.6 QUALITY ASSURANCE

**3.6.1** All work under the Contract shall be carried out in accordance with the provisions of this Condition.

**3.6.2** The Contractor is responsible for ensuring:

- a) The quality of the Articles and material supplied conforms to Contract requirements;
- b) The quality planning and management activities conform to Contract requirements; and
- c) Sub-contractor controls conform to Contract requirements including providing reasonable access to the sub-contract premises for the Authority's Quality Assurance Representative (QAR).

**3.6.3** The Contractor shall hold Quality Management System certification ISO 9001, with the appropriate scope, which accords with the scope of the Contract requirements, issued by a third-party certification body.

**3.6.4** The Contractor shall maintain ISO 9001 certification, with the appropriate scope for the duration of the Contract.

**3.6.5** The following quality standards and requirements shall apply and the Contractor's Quality Management System shall deliver compliance with these standards and requirements:

- a) AQAP 2110, Edition D, Version 1 – NATO Quality Assurance Requirements for Design, Development and Production.
- b) AQAP 2210 Edition A Version 2 - NATO Supplementary Software Quality Assurance Requirements to AQAP 2110 or AQAP 2310 shall apply.
- c) AQAP2210 Edition 1 Nov 2006 – NATO Supplementary Software Quality Assurance Requirements to AQAP2110
- d) Concessions shall be managed in accordance with Def Stan. 05-061 Part 1, Issue 6 - Quality Assurance Procedural Requirements - Concessions.
- e) Any Contractor working parties shall be provided in accordance with Def Stan. 05-061 Part 4, Issue 3 - Quality Assurance Procedural Requirements - Contractor Working Parties.
- f) For guidance on the application and interpretation of AQAPs refer to the appropriate AQAP Standards Related Document (SRD).
- g) Where GQA is performed against this Contract it will be in accordance with AQAP 2070 Edition B Version 3.
- h) ISO 25051: 2008 Software Engineering - Software Product Quality Requirements and Evaluation (SQuaRE) - Requirements for quality of COTS software product and instructions for testing.
- i) Defence Standard 05-57, Issue 7 – Configuration Management of Defence Material.
- j) DEF-STAN 05-135 Issue 1 – Avoidance of Counterfeit Materiel
- k) DEFCON 627 – Quality Assurance - Requirement for a Certificate of Conformity



- l) ISO 9001:2015 certification required, with appropriate scope to cover the entirety of the project, and issued by a UKAS accredited body (or equivalent).
- m) No Deliverable Quality Plan is required reference DEFCON 602B 12/06.

### **3.7 STANDARDS OF PERFORMANCE**

**3.7.1** Without prejudice to Conditions 3.2.1 and 3.2.2, the Contractor shall perform its obligations under this Contract in accordance with:

- a) all applicable Laws;
- b) Good Industry Practice;
- c) the requirements of the Authority's Quality Assurance Requirements stipulated in Condition 3.6 (Quality Assurance);
- d) all applicable safety and environmental requirements;
- e) the requirements of the Safety and Environmental Case stipulated in Condition 3.10 (Safety and Environmental Case)

**3.7.2** Without prejudice to Condition 3.7.1, the Contractor shall also undertake all its duties and obligations under this Contract (including without prejudice to the generality of the foregoing with regards to design and project management) with all the skill, care and diligence to be expected of a professional Contractor who has held himself out as competent and experienced in fulfilling projects of a similar nature, size, scope, complexity and value as those the subject of this Contract; and

**3.7.3** The Contractor shall give all notices, pay all taxes, duties and fees, and obtain and maintain all permits, licences and approvals, as required by Law in relation to the design, execution and completion of the work required by the Contract. The Contractor shall comply with all such permits, licences and approvals including the discharging of all conditions of the same.

### **3.8 CONFIGURATION CONTROL**

**3.8.1** The Contractor shall conduct configuration management in accordance with DEF STAN 05-57 Issue 7 dated 28 July 2018. The Contractor shall ensure that the Authority's Project Manager (or his authorised representative) has full and free access to the Contractor's records of the configuration items and the configuration process.

### **3.9 SAFETY & ENVIRONMENTAL CASE**

**3.9.1** The Contractor shall:

- a) ensure that in performing the Contract the Contractor complies with all statutory duties and obligations relating to safety and the environment and shall be responsible for ensuring that no Contract requirement causes him to be in breach of any statutory duty or obligation relating to safety and the environment;
- b) immediately draw to the Authority's attention if it appears that any Contract specification or condition may render the Contractor in breach of any statutory duty or obligation relating to safety and the environment;
- c) ensure that where the Authority has been granted exemption from specific regulations, health and safety standards and arrangements will be, so far as reasonably practicable, at least as good as those required by statute,

- d) ensure that all safety targets detailed in the Contract have been met and all risks have been reduced to a level that is As Low As Reasonably Practicable (ALARP) prior to the operation and maintenance of the system by the Authority.

**3.9.2** The Authority may, without prejudice to any of its rights which may have arisen under Condition 3.10.1 above, require the Contractor to vary each such specification or condition in a manner acceptable to the Authority and which will not render the Contractor in breach of any statutory obligation relating to safety and/or the environment.

**3.9.3** Nothing in the Contract or in any other document created or signed on behalf of the Authority shall constitute a written undertaking for the purposes of Section 6 (8) of the Health and Safety at Work Act 1974 relieving the Contractor of any of his duties under Section 6 of that Act.

**3.9.4** The Authority shall enter a Contract with the Joint Command and Staff Trainer Authority for:

- a) the Authority to fulfil its obligations to deliver safety and environmental data as Government Furnished Assets under the Contract; and
- b) the provision of a complete Part 2 Safety and Environmental Case for the JCAST systems.

**3.9.5** The Authority will appoint an Independent Safety Adviser, (the "Independent Safety Advisor" or "ISA") to advise the Authority with respect to the JCAST System Part 2 Safety and Environmental Case and the complete Part 2 Safety and Environmental Case.

**3.9.6** The Contractor shall provide the JCAST Design Authority and the ISA respectively with such of its safety data/information as each may reasonably require;

**3.9.7** The Authority shall provide, and shall procure that the JCAST Design Authority shall provide the Contractor and the ISA respectively with such of its safety data information as each of the Contractor and the ISA may reasonably require. In the event that the JCAST Design Authority is unable to provide the information that the Contractor and the ISA reasonably require then the Parties agree that the Authority shall be entitled to procure the information through alternative sources.

**3.9.8** Should the ability of the Contractor to meet its obligations under the Contract be materially affected by the lack of delivery of the Government Furnished Assets referred to in Condition 3.10.4, then The Contractor:

- a) shall notify the Authority of the programme impact including anticipated delay but shall not for the first 90 days of such impact, make such notification and shall bear its own costs associated with any consequential schedule delay;
- b) for the first 90 days of such impact, the Authority will agree to an extension of the Contract schedule and associated Contract milestones, commensurate with the delay caused to the programme by the lack of Government Furnished Assets; and
- c) should it be assessed by the Authority and the Contractor that the delay impact will be greater than 90 days, the Parties shall meet and use all reasonable endeavours to determine the way forward to resolve the lack of Government Furnished Assets referred to in Condition 3.10.4 in accordance with Condition 2.15.

**3.9.9** In the event that there is a disagreement between the Parties in relation to or arising out of the Part 2 Safety and Environmental Cases referred to in Condition 3.10.5 the ISA will act as an independent expert in the first instance of any disagreement. For these purposes disagreement includes for example, and without limitation, disagreement as to the necessity of any requirement for any safety data for any specific purpose, whether or not any safety deliverable is satisfactory or whether any safety related statement in a document is correct.

**3.9.10** To facilitate resolution of disagreements and disputes (including disagreements or disputes involving the JCAST Design Authority) arising out of or relating to the Part 2 Safety and Environmental Cases referred to in Condition 3.10.5:

- a) The Parties shall include the ISA and, to the extent they are involved, the JCAST Design Authority in any initial attempts to resolve the disagreement;
- b) The Parties agree to include the ISA and, to the extent they are involved, the JCAST Design Authority in the dispute resolution process set out in Conditions 2.13;
- c) neither Party shall object to the joining of the JCAST Design Authority to any arbitration commenced pursuant to Conditions 2.13.5 to 2.13.7 and DEFCON 530 in relation to, and to the extent of any JCAST Design Authority involvement in, any dispute arising out of or in connection with the Part 2 Safety and Environmental Cases referred to in Condition 3.10.5.
- d) the Authority shall enter into an agreement with the JCAST Design Authority in terms that shall oblige the JCAST Design Authority, where they are involved in any disagreement or dispute arising out of or in connection with the Part 2 Safety and Environmental Cases referred to in Condition 3.10.5, to join with the Parties and the ISA in initial attempts at resolution as per the dispute resolution process set out in Conditions 2.13.2 to 2.13.4 and that the JCAST Design Authority shall join any attempts at resolution with appropriate levels of representation.
- e) The Authority shall enter into an arbitration agreement with the JCAST Design Authority in terms similar to that set out in Condition 2.13 of this Contract such that the JCAST Design Authority may be joined to arbitration as set out in Condition 3.10.10 of this Contract.

### **3.10 SPARES**

**3.10.1** The Contractor shall be responsible for managing the GFA Articles in an adequate way as to provision for spares. In the event the Contractor cannot manage the GFA Article pool to provide a spares provision, he should contact the Authority to open a dialogue on the issue and mutually agree a resolution as to avoid any impact to the capability.

### **3.11 OBSOLESCENCE**

**3.11.1** The Contractor shall be responsible, for the duration of the Contract for ensuring the continued supply and maintainability of all Articles, software and hardware under this Contract whether they are of the Contractor's own design or those of any of his Sub-contractors. When the GFA list is declared and agreed with the Authority no later than Critical Design Review acceptance, this list shall include a projected obsolescence date for all items to assist future obsolescence reporting and decision making.

**3.11.2** The Contractor shall be responsible for identifying any Article or part of an Article which it believes may become obsolete and shall notify the Authority of such pending obsolescence as soon as reasonably practicable together with its proposed course of action to alleviate such obsolescence. Within any case the Contractor shall notify the Authority within 10 working Days. The Contractor shall be responsible, at its own expense, for recommending its proposed course of action with reasonable justification and will allow the Authority adequate time to review this recommendation before deciding on the way forward. The Authority shall take on the liability of such Obsolescence costs and shall procure replacement Articles before supplying back to the Contractor to join the GFA pool.

**3.11.3** The Contractor in addition, shall provide an Obsolescence Report, in line with the Quarterly Progress Meetings (QPM), to summarise Obsolescence in relation to the GFA list; identifying the obsolescence status of Articles.

## 4. PRICE

### 4.1 DEFCONS

DEFCON 127 (Edn.12/14) – Price Fixing Condition for Contracts of Lesser Value

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

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

- For this Contract, all import duties and customs drawback shall be calculated within all pricing statements and quotations provided by the Contractor.

DEFCON 643 (Edn.12/14) – Price Fixing (Non-qualifying contracts)

DEFCON 647 (Edn.04/19) – Financial Management Information

- For this Contract, this condition shall apply in conjunction with Earned Value Management requirements of the Contract (Annex F & Condition 9.4).
- In addition to the requirements contained within this DEFCON, Management Information shall be provided inline with the Statement of Requirement and shall be delivered to the Authority no later than 10 days prior to the Quarterly Progress Meetings (QPM's).
- Where this DEFCON references Annex A & B, for this Contract Annex F shall be applicable.

DEFCON 649 (Edition 12/16) - Vesting

- For this Contract, this condition shall apply in conjunction deliverables in the Schedule of Requirements and Milestone Payment Plan at Annex D to the contract.

### 4.2 PRICING OF ITEMS ON THE SCHEDULE OF REQUIREMENTS

**4.2.1** The prices for line items 1,2,3 & 4 as detailed in Table 1 of the Schedule of Requirements (SoR) are Firm Price and shall not be subject to variation.

**4.2.2** The prices shall include all costs of the Contractor satisfying his obligations under these Items in accordance with the terms and conditions of the Contract. The prices are inclusive of all royalties, licences, and taxes (excluding Value Added Tax).

**4.2.3** The prices for line items 5 – 24 inclusive, detailed in Table 2 of the SoR are Fixed Prices and subject to variation in accordance with Condition 4.5 (Variation of Price) of this Contract.

### 4.3 PRICING OF CHANGES TO THE REQUIREMENT

**4.3.1** Where a change in requirement as detailed in the Contract change procedure at Condition 2.14 necessitates an adjustment to an agreed price under the Contract, or a new price to be added to the Contract, the Contractor shall submit to the Authority within 10 (ten) business days (or such other period of time as agreed with the Authority) of the request the following information in support of the price quoted:

- a) A Firm Price quotation, utilising the agreed labour, overhead and profit rates detailed at Appendix 1 of Annex P to the Contract (Pricing Rates for any Changes to the Contract), for the work required to be carried out under the proposed amendment. The quotation should provide to the Authority full visibility of the build-up of the price. This information, which shall contain sufficient detail as to allow the Authority accurately to assess the extent to which the price quoted for the revised requirement is fair and reasonable.

**4.3.2** All price changes shall be subject to DEFCONs 643, 647 and 127 as appropriate.

**4.3.3** The Contractor agrees to the information in Condition 4.7 (Open Book Accounting) being used to provide equality of information to the Authority in pricing any changes to the Contract.

**4.3.4** Timely pricing of a proposed amendment is essential to the efficient execution of the Contract. The Contractor shall make all reasonable endeavours to supply information and negotiate within 30 days of the provision of the change by the Authority. The price within the Contractor's proposal shall be a fair and reasonable price, and the Contractor shall adopt a system of parallel working with the Authority (and his representatives) when preparing his quotation.

**4.3.5** Unless otherwise agreed at Condition 4.3.6 below, no work under the proposed amendment shall commence until a price has been agreed.

**4.3.6** Where, under exceptional circumstances, it is necessary for work to commence prior to an agreed price, the Authority may agree a maximum price limiting the Authority's Liability.

**4.3.7** The Authority, may at its own discretion, use an independent contractor to aid with the assessment of pricing.

**4.3.8** In the event the change to the requirement is anticipated to be above £5m, the Contractor shall price the change in accordance with the Single Source Contract Regulations 2014.

#### **4.4 IMPORT DUTY**

**4.4.1** With respect to paragraph 4 of DEFCON 528 (Edn.07/17), Articles imported from outside the EU are deemed to be military equipment under the terms of the EC Regulations and as such will be exempt from duty. A certificate to this effect will be provided to the Contractor within one month of a request from the Contractor for an Import Duty Waiver. In order to issue a waiver, the Contractor shall provide to the Authority's Commercial Manager the following details: country of origin; description of Article(s); the price of the Article(s); form of delivery and port of delivery of the Article, as a minimum.

#### **4.5 VARIATION OF PRICE**

**4.5.1** The prices stated in the Schedule of Requirements for line items 5 to 24 are fixed at November 2019 price levels. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased. Any such variation shall be calculated in accordance with the following formula:

$$V = P (a+b (O_i/O_0)) - P$$

*Where:*

V represents the variation of price

P represents the FIXED price as stated in the Schedule of Requirements

O represents the indices "All Services Gross Sector (K8ZU)"

O<sub>0</sub> represents the average OUTPUT Price Index figure for the base period representing the value average of the previous 12 months of the agreed published indices as at July 2019

O<sub>i</sub> represents the average OUTPUT Price Index figure for the period representing the value of the average of the previous 12 months of the agreed published indices at the month a stage payment (as may be agreed) is claimed by the Contractor

a represents the Non-Variable Element (NVE) of 10% or 0.1

b represents the Variable Element of 90% or 0.9

a+b=1

The Indices referred to in Condition 4.5.1 above shall be taken from the following Tables:

- a) ONS Publication "K8ZU: Services Producer Price Inflation time series dataset"

**4.5.2** Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for Variation of Price conditions and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.

**4.5.3** In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the Contract and before final adjustment of the final Contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.

**4.5.4** In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Condition 4.5.3 above) shall then be applied.

**4.5.5** Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.

**4.5.6** The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.

**4.5.7** Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.

**4.5.8** Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the requirements of this Condition 4.5 have been met.

#### **4.6 EXERCISE OF OPTIONS**

**4.6.1** In addition to the services provided under Schedule Items 1 to 4 - Schedule of Requirements the Contractor hereby grants to the Authority the irrevocable option to extend the duration, set out in clause 2.16, in accordance with Schedule Items 5 to 24 of this Contract by a period of up to 24 months (in 1 year increments), it being agreed that the Authority has no obligation to exercise such option.

**4.6.2** Option Prices for line items 5 to 24 shall be Fixed Price, and subject to Variation of Price. Should the Authority exercise the option then Firm Prices shall be agreed between the Contractor and the Authority using this mechanism in Contract Condition 4.5 (Variation of Price).

**4.6.3** The Authority shall have the right to exercise the options no later than 2 (two) months prior to Contract expiry.

#### **4.7 OPEN BOOK ACCOUNTING**

**4.7.1** The Contractor shall always maintain full, current and accurate financial and accounting records relating to the performance of its obligations under this Contract. Such records shall include, without limitation:

- a) direct labour and indirect labour costs
- b) direct material and sub-contract costs, including the full cost of purchasing or sourcing Articles;
- c) overhead costs analysed to identify appropriate categories;
- d) payment details to suppliers and Sub-contractors;

- e) capital expenditure;
- f) such other information as the Authority may reasonably require;

**4.7.2** For any proposed Contract amendment, the Contractor shall provide open book data to the Authority, including access to the original competitive bid pricing information and current financial and accounting records insofar as such information is relevant to the change, in order that the Authority can ascertain a fair and reasonable price for the amendment.

**4.7.3** The open book data at Condition 4.7.2 shall include Tier 1 sub-contractors' information. Where the Contractor is unable to obtain open book data from a sub-contractor not based in the United Kingdom, then the Contractor shall obtain agreement with the sub-contractor for an audit to be completed by authorities in their respective country.

**4.7.4** Subject to 5 (five) business days' notice, the Contractor shall provide any facilities that the Authority may reasonably require for the Authority or its nominated representatives to visit the Contractor's offices and the offices of its Sub-contractors (or any place where such records are held) to examine such records maintained under this Condition.

**4.7.5** The Contractor shall make available audited financial statements (which shall contain a full set of accounts including, but not limited to a profit and loss account, balance sheet and cash flow statement, or equivalent financial statements, audited by a firm of independent accountants, Auditor's and Directors reports and accompanying explanatory notes, including changes to accounting policies) for the Contractor and its ultimate holding company, as soon as reasonably practicable after each becomes available.

**4.7.6** All financial statements pursuant to Condition 4.7.5 shall be prepared on a basis consistently applied in accordance with generally accepted accounting principles in England, or accounting principles consistent with UK reporting accounting standards or relevant international accounting and reporting standards. They shall give a true and fair view of the results of the Contractor's operations for the period in question, and of the state of the Contractor's affairs as at the date at which the financial statements are made.

**4.7.7** Without prejudice to the Contractor's obligations under DEFCON 659A (Security Measures), the Contractor shall retain the records referred to in this Condition 4.7 for the period of at least 6 (six) years from the respective start dates.

## 5. INTELLECTUAL PROPERTY RIGHTS & INFORMATION

### 5.1 DEFCONS

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

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

- For this Contract, this condition shall apply in conjunction with the Contract Data Requirements (Annex K).

DEFCON 16 (Edn. 10/04) – Repair And Maintenance Information

DEFCON 21 (Edn. 10/04) – Retention Of Records

DEFCON 90 (Edn.11/06) – Copyright

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

- This DEFCON shall only apply to software developed under the Contract and subject to the agreed IPR plan (Appendix 1 to Annex V - Representative Taskings for PDS Pricing). Pre-existing Software of a Sub-contractor shall be licenced to the Contractor and the Authority. Pre-existing Software of the Contractor shall be licensed to the Authority under separate licences in the form of DEFFORM 701.

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

- For this Contract, DEFCON 632 does not apply to software that is subject to DEFFORM 701

DEFCON 703 (Edn.08/13) – Intellectual Property Rights - Vesting In the Authority.

- For this Contract, DEFCON 703 will apply to all Software GFA with IPR vesting in the Authority. To the extent that the software deliverables will not be exploitable due to security or export control considerations then DEFCON 703 shall apply. Including but not limited to any modifications to hardware/software provided as GFA then DEFCON 703 shall apply in accordance with Guidelines for industry No 10, Part A, Paragraph 16.

### 5.2 COMMERCIAL EXPLOITATION

**5.2.1** The Contractor shall, subject to security considerations that will be assessed by the Authority, have the right to sell any Articles developed under the Contract. Prior to any sale of the Articles developed under the Contract, the Contractor shall agree with the Authority the levy payable, and conclude a Commercial Exploitation Agreement in the form of Annex B to the Contract.

### 5.3 MARKING OF DELIVERABLES

**5.3.1** This Condition 5.3 shall apply in addition to and notwithstanding DEFCON 90. All deliverable materials, documents and or works, including progress reports, shall be marked in accordance with the relevant Intellectual Property Rights (IPR) provision against which they are delivered under this Contract. Failure to do so shall be valid grounds for the rejection by the Authority of any such deliverable.

**5.3.2** In the event that any deliverable by the Contractor or his sub-contractor or any tier is identified incorrectly as containing or comprising Background Intellectual PR or otherwise subject to third party rights (and such Intellectual Property Rights are Foreground IPR) then the Authority shall nevertheless be entitled to exercise its rights in relation to Foreground IPR.

**5.3.3** In the case of single ownership of the Intellectual Property Rights (including copyright, design right and the information) in any deliverable document, the body text shall be marked to indicate Background IPR and Foreground IPR and a key relating to such marking shall be provided by the Contractor.



**5.3.4** In the case of any deliverable document comprising or containing more than one copyright work, or the inclusion of any third party Background IPR (including copyright or design right), the copyright work, the work in which design right subsists and/or the Background IPR shall be further marked to indicate the individual owners of each IPR (including design right) and/or copyright work including the relevant section, part, paragraph, diagram and or drawing and a key relating to such marking shall be provided by the Contractor.

#### **5.4 DEFFORM 701**

Any deliverable software identified as “not generated” under the Contract, shall be subject to the conditions contained in Annex N to the Contract (Software License Agreement – DEFFORM 701).

#### **5.5 CONFIDENTIALITY**

Notwithstanding any other term of this Contract, the Contractor shall ensure all information released to sub-contractors and any third-parties for the performance of this Contract shall be in accordance with DEFCON 531 and Condition 2.9 of this Contract. An endorsed confidentiality agreement (Annex I to the Contract) will be submitted to the commercial representative of the Authority identified in Appendix 1 to this Contract (DEFFORM 111) before any information is transferred or released from the Contractor to sub-contractors and third-party suppliers.

## 6. LOANS

### 6.1 DEFCONS

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

- The Contractor's liability under paragraph 4 of DEFCON 76 (Edn 12/06) shall be unlimited.

DEFCON 608 (Edn. 10/14) – Access And Facilities To Be Provided By The Contractor

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

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

### 6.2 SUPPLY OF GOVERNMENT FURNISHED ASSETS (GFA)

**6.2.1** Government Furnished Assets to be issued in aid of this Contract are categorised as:

a) Government Furnished Equipment (GFE)

- I. Contract Support Item (CSI) – is the issue of a material to the Contractor without charge for a specific period and purpose in support of the Contract. The Contract Support Item remains the property of the Authority throughout the loan period and should be returned unchanged except for fair wear and tear.
- II. Contract Embodiment Item (CEI) – is material issued without charge to a Contractor for embodiment in an Article that is under manufacture, modification, conversion or repair under the Contract. Embodiment Item may comprise fully developed/ production items or materiel that is itself the subject of a separate and parallel development to that of equipment which it supports.

b) Government Furnished Facilities (GFF)

GFF are those facilities which the Authority has agreed it will make available for the purpose of the Contract at no charge to the Contractor.

c) Government Furnished Information (GFI)

GFI takes the form of either Authority owned information or third party owned information being provided to the Contractor, by the Authority, to facilitate performance of the Contract.

**6.2.2** The Authority shall make available to the Contractor free of charge, those items of Government Furnished Assets (GFA) in aid of the work to be carried out under this Contract which are listed in Annex L.

**6.2.3** The Authority's point of contact for arranging access to or issue of the GFA is the Project Manager listed in section 2 of DEFFORM 111.

**6.2.4** The Contractor shall comply with the latest version of DEF-STAN 05-99, Issue 3 Managing Government Furnished Assets in Industry. It shall be the Contractor's responsibility to ensure that all GFE is held in suitable conditions.

**6.2.5** All GFA shall be held on the loan terms detailed in Conditions 6.1 and 6.2 of the Contract and the category of loan as per Annex L, and shall be used solely in aid of the work to be carried out under this Contract. All such loans issued shall be recorded by the Contractor or, where appropriate, his sub-contractor accordingly. In the event of any dispute between the Contractor and the Authority on any definition of the GFA detailed or referenced within Annex L to the Contract, the Authority's decision shall be final.

**6.2.6** The Contractor shall comply with DEFCON 611 and notify the Authority of any defects, deficiencies or discrepancies found in the GFA listed in Annex L.

**6.2.7** The Authority shall endeavour to provide the Contractor with timely notification should any GFA in Annex L not be available. Should the Authority not be able to provide GFA as prescribed in Annex L, then

the Authority and the Contractor shall use their respective reasonable endeavours to minimise the impact of any non-availability. In the event that any non-availability has an impact on the programme or cost the Contractor shall promptly provide written notification to the Authority.

**6.2.8** Full particulars, including the issue and return date, detailed description, build standards and quantity of GFA shall be populated at or prior to the Contract Effective Date. In the event that the requirements at Annex L to the Contract are not specified at the Contract Effective Date, then they shall be populated no later than 6 months (or such lesser period as may be agreed by the Authority on a case by case basis) before the GFA is required. The Authority shall accept no liability to provide the GFA until the full particulars have been agreed between the Authority and the Contractor and are fully populated in Annex L of the Contract.

**6.2.9** The Contractor shall be responsible for the return of the GFE & GFI listed in Annex L.

**6.2.10** The use of GFA shall not relieve the Contractor of any of his responsibilities for the proper performance of the Contract. It is the Contractor's responsibility to determine that the GFA is fit for the Contractor's purpose.

**6.2.11** Should agreed dates for the provision of GFA be subsequently revised due to the Contractor's programme changes, the Authority will endeavour to supply GFA to meet the revised dates. The Authority will however not be under any obligation to provide GFA outside of the dates(s) agreed for that item in Annex L unless a change has been agreed by the Authority via the Contract Change Procedure in Condition 2.14.

#### **6.2.12 Interface requirements for GFI**

- a) The Authority may issue the Contractor with Interface Control Documents (ICDs) for interfacing equipment. If required by an ICD design authority, the Contractor shall agree an appropriate confidentiality agreement with the ICD design authority to protect the information being provided.
- b) The Contractor shall contract with the ICD design authorities for all mandatory installation setting-to-work and testing, and such optional testing or design work as the Contractor deems to be required.
- c) For any ICDs controlled under International Trade In Arms (ITAR), the Contractor shall ensure that they have the appropriate commercial mechanisms in place between them and the Design Authority to facilitate access to technical assistance, sublicensing, ITAR and Intellectual Property Rights controlled information.
- d) It is the Contractor's responsibility to fund any support required from an ICD Design Authority.

#### **6.2.13 Contract Embodiment Items**

It is the responsibility of the Contractor to

- a) Embody Articles loaned to the Contractor under CEI terms in Annex L of this Contract.
- b) Ensure that installation, setting-to-work, trials and maintenance are properly performed and, hence, that guarantees given to the Authority by the CEI provider are not invalidated.
- c) Inform the Authority where the performance of the CEI limits the compliance JCAST design against the requirements of the System Requirements Document.
- d) Coordinate and arrange all attendance by CEI providers representatives to execute or oversee work in connection with the unpacking, installation, setting-to-work, maintenance, or trials of the CEI provided.
- e) Place a sub-contract on the CEI provider, as appropriate, to

- I. undertake such installation, setting-to-work, tests, trials and inspection work that the Contractor requires the provider to perform;
- II. attend and advise, as agreed between the Contractor and the CEI provider during installation, setting-to-work, tests, trials and inspections;
- III. assist the preparation of quality assurance, safety or environmental documentation.

#### **6.2.14 Additional GFA**

The Authority is under no obligation to provide any GFA which is not included in Annex L to the Contract. If the Contractor identifies GFA additional to that detailed at Annex L that he requires to enable him to perform this Contract he may submit a written request to the Authority. Additional GFA may be supplied by the Authority on loan, providing that they are reasonable for the Authority to provide, are available during the requested periods of use, and that the Contractor can demonstrate that the GFA is relevant to the Contract and cannot be reasonably procured/supplied elsewhere by the Contractor. Any additional GFA which is agreed by the Authority will be added to the Contract by contract amendment in accordance with Condition 2.12 (Amendments to Contract).

#### **6.2.15 Maintenance**

- a) The Contractor shall be responsible for all the maintenance of all GFE issued under this Contract. The Contractor shall ensure that any maintenance follows the manufacturer's instructions. The cost of the maintenance shall be included in the Contract Price, and no additional charge is to be made to the Authority.
- b) The Contractor shall ensure that any maintenance on GFE does not invalidate any warranty provided by the equipment manufacturer.
- c) The Contractor shall not modify any GFE without the written approval of the Authority's Commercial Manager (See Box 1 of DEFFORM 111)
- d) For any GFE that requires calibration the Authority shall issue fully calibrated and certified. The Contractor shall be responsible for any further calibration required during the duration of the loan.

#### **6.2.16 Return of GFA**

On completion of the agreed period of loan of any GFA, the Contractor shall seek return/ disposal instructions from the Authority's Commercial Manager (see Box 1 of DEFFORM 111). Any request for disposal/return instructions for Authority owned equipment shall be accompanied by a copy of the loan equipment register. At completion of the Contract, the GFA shall be in the same condition that it was issued, subject to fair wear and tear.

## **7. DELIVERY/ACCEPTANCE**

### **7.1 DEFCONS**

DEFCON 129J (Edn.18/11/16) – The Use Of Electronic Business Delivery Form

DEFCON 507 (Edn.10/18) – Delivery

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

DEFCON 524 (Edn.10/98) – Rejection

DEFCON 525 (Edn.10/98) – Acceptance

DEFCON 621A (Edn.06/97) – Transport (If The Authority Is Responsible For Transport)

- For this Contract, The Authority shall state explicitly, goods associated with delivery it shall be responsible for transporting.

DEFCON 621B (Edn.10/04) - Transport (If Contractor Is Responsible For Transport)

### **7.2 DELIVERABLES**

**7.2.1** The acceptance procedures that apply to the deliverables in the Schedule of Requirements are set out in Appendix 3 of Annex A to the Contract (ITEAP).

**7.2.2** The deliverables are required to be provided in accordance with the timescales at Appendix 1 to the Schedule of Requirements of the Contract.

**7.2.3** The Contractor shall inform the Authority as soon as he becomes aware of any event or reasons likely to result in failure to meet the delivery schedule, at Appendix 1 of the Schedule of Requirements.

**7.2.4** The Contractor shall pack the Articles of Schedule of Requirements in accordance with the terms of the Contract and if no specific terms are agreed, the Contractor shall pack the Articles to such standard as may be reasonable to protect the Articles from the normal hazards of transport to the point of delivery.

**7.2.5** Unless otherwise provided for in the Contract, all containers (including packing cases and boxes) used by the Contractor shall be non-returnable and included in the Contract price.

### **7.3 FITNESS FOR PURPOSE**

**7.3.1** For the purpose of Section 14(3) of the Sale of Goods Act 1979 (as amended) and the Condition regarding fitness for purpose which is implied by that section within this Contract, the Parties agree that in relation to any deliverable to be provided under this Contract, a deliverable will be deemed fit for purpose if:

- a) It meets the requirements for Design Acceptance and is delivered and accepted in accordance with the agreed acceptance process;
- b) It complies with all applicable laws and standards;
- c) It is suitable for the incorporation or installation of any Government Furnished Assets as defined in Annex L with effect from the Contract Effective Date;
- d) The deliverable is a part or spare or other component where the incorporation of that part or spare or component does not prevent any other deliverable meeting the requirements of 7.3.1.a, 7.3.1.b, or 7.3.1.c above.

#### **7.4 FORCE MAJEURE**

**7.4.1** If, by reason of any acts of nature, war, hostilities or of any fire at any of the Contractor's premises or those of his sub-contractors the Contractor shall have been delayed in completing the work under the Contract, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give to the Authority notice in writing of his claim for an extension of time for the completion of the delivery and the Authority shall allow the Contractor an extension of time for such completion in respect of any delay caused by any of the circumstances before mentioned as shall be reasonable. Provided always that the Contractor shall not be entitled to any extension of time unless he shall at all times have used all reasonable endeavours to prevent any such delay and to minimise any such delay and to do all that may be reasonably required to the satisfaction of the Authority to proceed with the work.

**7.4.2** The maximum extension of time granted under this Condition for any Schedule of Requirements Item shall be limited to 6 (six) months.

## **8. PAYMENTS / RECEIPTS**

### **8.1 DEFCONS**

DEFCON 5J (Edn.18/11/16) Unique Identifiers

DEFCON 35 (Edn.10/04) Progress Payments

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

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

### **8.2 PAYMENT**

**8.2.1** In addition to DEFCON 522, all payments will be in line with Annex C and Annex D of this Contract. Payment for Schedule of Requirement (SoR) items, shall be upon completion of all work by the Contractor for that SoR item. The Contractor shall then claim payment via CP&F.

## **9. CONTRACT ADMINISTRATION**

### **9.1 DEFCONS**

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

DEFCON 609 (Edn.08/18) – Contractor's Records

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

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

### **9.2 REPORTS AND MANAGEMENT**

#### **9.2.1 Meetings**

- a) The Contractor shall facilitate management meetings and render reports as to the progress of the Contract and in such form and at such frequency as detailed in the Statement of Requirement (Annex A to the Contract).
- b) The Contractor shall ensure that appropriate personnel attend the meetings. The Contractor shall provide secretariat support to all meetings which shall include organising the meeting concerned, proposing and agreeing the agenda with the Authority's Project Manager (identified at Box 2 of the DEFFORM 111 Appendix to the Contract), preparation of draft minutes, and final copies and co-ordinating the preparation of reports as required in accordance with Condition 9.2.4.
- c) The location of each meeting shall be as agreed with the Authority's Project Manager.
- d) The Contractor shall attend and provide secretariat support at Progress Meeting. These meetings may be concerned either with progress in relation to the support of the JCAST System and/or in relation to the overall performance of the Contract.
- e) The Contract Status Report shall include, but not be limited to the following: -
  - Overall Progress Assessment;
  - Performance of the Authority in terms of Performance Indicators (KPIs);
  - Key dates approaching;
  - Updated Risk Registers and intentions to deal with key risks;
  - Failures and corrective actions;
  - Critical Path Assessment;
  - Intentions to bring activities back on-line if behind schedule;

#### **9.2.2 Minutes**

- a) The Contractor shall document and agree with the Authority the key 'points of note' and actions prior to the closure of a review, working group or meeting. In the event that the time taken to document the key 'points of note' and actions would unduly delay the closure of a review, working group or meeting, the Contractor shall provide a draft record of actions within 1(one) business day.
- b) The Contractor shall draft minutes or key 'points of note (including actions)', as agreed with the Authority's Project Manager, for all the above meetings and submit them for approval by the Authority's Project Manager within 5 (five) business days of the meeting, and shall issue a final version, 2 (two) business days following approval of the draft minutes or 'points of note (including actions)'.



### 9.2.3 Reports

- a) Unless otherwise requested the Contractor shall provide 1 (one) hard copy and 1 (one) electronic copy of each report 7 (seven) business days prior to the meeting to which they relate. The format and scope may change over the duration of the Contract, but must be agreed with the Authority's Project Manager identified at Box 2 of DEFFORM 111- Appendix to Contract.

**9.2.4** All costs incurred by the Contractor in connection with these meetings, and all other meetings in connection with this Contract, shall be deemed to be included in the Contract price.

### 9.3 RELATIONSHIP MANAGEMENT PLAN

The Contractor and the Authority shall maintain the Relationship Management Plan, at Annex S to the Contract, throughout the duration of the Contract, and this shall be reviewed at 6 monthly intervals in order to improve the relationship wherever possible. The outcome of the measurements and the steps taken for improvement will be subject to independent assurance from outside of the project.

### 9.4 EARNED VALUE MANAGEMENT SYSTEM (EVMS)

**9.4.1** The Contractor shall implement and maintain an Earned Value Management System (EVMS) to be used in the management of the Contract in accordance with the Statement of Requirement (Annex A to the Contract). The EVMS for this Contract shall comply with the Association of Project Management (APM) EVM Guide for the UK, and compliance shall be maintained for the duration of the Contract.

**9.4.2** The Contractor shall make available to the Authority the reports in accordance with the EVMS Plan. The reports shall be made available to the Authority on a monthly basis and report current and cumulative project status information to at least level 3 of the Contract Work Breakdown Structure (CWBS).

**9.4.3** The Contractor shall report all variances down to level 3 of the CWBS which exceed the thresholds agreed between the Contractor and Authority. Reports on variances shall clearly state:

- a) The cause of the variance and the potential impact of the variance on the overall project cost and schedule.
- b) All corrective actions taken and scheduled to mitigate the variance.
- c) State the new risks associated with this course of action that have been identified.

### 9.5 PUBLICITY

**9.5.1** The Contractor shall not issue or otherwise publish any publicity or advertising material, or provide any information to journalists concerning this Contract without the Authority's express consent.

### 9.6 EXIT STRATEGY

**9.6.1** In the event that either the Authority or the Contractor notifies the other Party of its intention to terminate the Contract prematurely, hereinafter 'the Notification', or in accordance with Condition 2.10, DEFCON 514, DEFCON 656B or any other provision of this Contract, where solely the Authority may decide to terminate the Contract, or in accordance with DEFCON 518, where the Contractor shall inform the Authority of its intention to transfer contractual obligations to a replacement contractor and where the Authority may decide to terminate the Contract, it shall be the responsibility of both Parties to ensure that appropriate management and all supply chain responsibilities transfer to the Authority (or the replacement contractor), in a practicable manner in accordance with Annex E to the Contract (Exit Management Plan). The provisions of DEFCON 625 shall apply, in addition to the specific requirements of this Condition.

**9.6.2** On such "Notification", the Authority shall determine which Government Furnished Equipment, Government Furnished Facilities, Government Furnished Information and/or Government Furnished Resources it requires to be returned, in accordance with DEFCON 611 and the timing and other requirements of such return. The Authority shall determine the contracting arrangements (if any) it intends to adopt with the Contractor for continuing support (if required).

**9.6.3** Other than in circumstances where the Contract is determined under Condition 2.10 or DEFCON 514, the Authority shall meet or reimburse the Contractor for such reasonable expenses that the termination of the Contract makes unavoidable, provided the Contractor can demonstrate that:

- i. The expenses directly result from commitments made by the Contractor on behalf of the Authority and are directly related to fulfilling the contractual requirements of the Contract;
- ii. The Contractor has taken all immediate and reasonable steps to mitigate and minimise such expenses, or to re-sale or reallocate stock or resources as deemed appropriate;
- iii. The Contractor shall demonstrate to the satisfaction of the Authority that such expenses were necessary expenditure in order to continue performance under the Contract;
- iv. The Contractor shall provide all supporting evidence, as may be requested by the Authority.

**9.6.4** At the time of termination, the Parties agree to enter into negotiations (at the earliest practicable opportunity), in order to manage the following:

- i. Obligations under leases: including property, fork lifts and other plant and equipment leased to support the Contract;
- ii. Redundancy payments to staff: Statutory or legal contractual redundancy obligations for staff whose employment becomes redundant due to termination of the Contract, provided they have been employed solely to fulfil the Contractor's obligations under the Contract;
- iii. Purchase of stock of materials: To include unused paint and any parts bought specifically for the Contract and not otherwise paid for by the Authority (giving consideration to resale);
- iv. Losses on Plant and Machinery: The Authority will consider contributing to any losses incurred on Plant and Machinery purchased by the Contractor in support of the Contract;
- v. Loss of Profit: The Authority will contribute to loss of profit incurred by the Contractor under the Contract, provided the Contractor can demonstrate hardship due to such loss of profit;
- vi. Other costs: Other reasonable costs that the Contractor is obliged to pay, demonstrated to be incurred specifically to enable the Contractor to fulfil its obligations under the Contract.

**9.6.5** The Parties agree that Condition 9.6 will continue to apply, in the event the Contract is novated to a third party and will make provision for its inclusion in a novated Contract.

**9.6.6** In cases of contradiction, ambiguity or dispute between the provisions of this Condition and DEFCON 514 and/or DEFCON 656B, the DEFCONs shall take precedence.

## OFFICIAL SENSITIVE - COMMERCIAL

## APPENDIX TO CONTRACT CONDITIONS – DEFFORM 111

(Edn 05/19)

## Addresses and Other Information

## 1. Commercial Officer

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## 8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to

[REDACTED]

2. For all other enquiries contact

[REDACTED]  
[REDACTED]

## 2. Project Manager, Equipment Support Manager or PT Leader

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## 9. Consignment Instructions

## 3. Packaging Design Authority

Where no address is shown please contact the Project Team in Box 2)

## 10. Transport. The appropriate Ministry of Defence Transport Offices are:

## A. DSCOM,

Air Freight Centre

IMPORTS

EXPORTS

Surface Freight Centre

IMPORTS

EXPORTS

## B. JSCS

JSCS Helpdesk No.

JSCS Fax No.

[www.freightcollection.com](http://www.freightcollection.com)

## 4. (a) Supply/Support Management Branch or Order Manager:

Branch/Name:

(b) U.I.N.

## 5. Drawings/Specifications are available from

## 11. The Invoice Paying Authority

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## 6 Intentionally blank)

## 12. Forms and Documentation are available through \*:

[REDACTED]  
[REDACTED]

(Tel. [REDACTED] Fax: [REDACTED])

Applications via fax or email:

[REDACTED]

## 7. Quality Assurance Representative:

AQAPS and DEF STANs are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

## \* NOTE

1. Many DEFCONs and DEFFORMs can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

