



Ministry  
of Defence



## **Type 23 - Power Generation and MCAS Update (PGMU) - Diesel Generators**

**CONTRACT SSA/004/01**

**CONTRACT**

**Terms and Conditions**

Issue: v1.0

Date: 02 March 2015

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## **SCHEDULES TO CONTRACT**

- A. STATEMENT OF WORK
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- C. CONTRACT PERFORMANCE MANAGEMENT
- D. PAYMENT PLAN
- E. RELATIONSHIP MANAGEMENT PLAN
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## **APPENDICES TO CONTRACT**

- 1. DELIVERABLE DOCUMENTATION ACCEPTANCE/REJECTION FORM
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- 3. TASK APPROVAL FORM
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- 5. DEFFORM 111
- 6. DEFFORM 315

## SCHEDULE OF REQUIREMENTS

	<b>MINISTRY OF DEFENCE</b> <b>Schedule of Requirement</b> <b>for</b> <b>Power Generation and</b> <b>Machinery Control and</b> <b>Surveillance System Update</b> <b>(PGMU)</b>	DEFCON 110 (Edn 4/88)  Contract No. SSA/004/01  Effective Date:  11 May 2015
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Table I **Contract Deliverables**

Item No	DESCRIPTION	FIRM PRICE (VAT ex) UK Sterling
1.	Provision of Lot 1 (Diesel Generators) equipment and technical services as defined at Parts 2 and 3 of Schedule A (Statement of Work) including a Guarantee Defects Period in accordance with Part 4 paragraph 4.3 of Schedule A. <ul style="list-style-type: none"> <li>a) Project Management as defined at Part 2 of Schedule A</li> <li>b) Supply and Engineering defined at Part 3 of Schedule A at paragraph 3.1.1.a and 3.1.1.f Equipment and Technical Services.  Additional 4 toolsets QL3 as requested on August 22<sup>nd</sup> 2014</li> <li>c) Supply and Engineering defined at Part 3 of Schedule A paragraph 3.1.1. d Fleet Spares</li> <li>d) Supply and Engineering defined at Part 3 of Schedule A paragraph 3.1.1e on board spares and uplift Base Spares</li> <li>e) Supply and Engineering defined at Part 3 of Schedule A paragraph 3.1.1.b Training DG Set</li> </ul>	£  £  £  £  £  £
2.	Provision of Integrated Logistics Support pre-planning activities as defined at Schedule A (Statement of Work) Part 4 paragraph 4.7.	£

Note- Items 1, 3 and 5 will be a Firm Price subject to Clause 25 (Indexation) in accordance with the attached provisions of Contract

## SCHEDULE OF REQUIREMENTS (Contd)

DEFCON 110  
(Edn 4/88)

**MINISTRY OF DEFENCE**  
**Schedule of Requirement**  
**for**  
**Power Generation and**  
**Machinery Control and**  
**Surveillance System Update**  
**(PGMU)**

Contract No.  
SSA/004/01  
  
Effective Date:  
11 May 2015

### Contract Deliverables

Item No	DESCRIPTION	FIRM PRICE (VAT ex) UK Sterling
3.	Provision of Interim Contractor Logistics Support of supplied equipment for a period of 30 months commencing from SAT(ME) as defined at Schedule A (Statement of Work) Part 4 paragraph 4.4.  Option: In-Service Reliability Demonstration (ISR D)	£  £
4.	Training Package for Lot 1 (Diesel Generators) as defined at Schedule A (Statement of Work) Part 5 and Supply and Engineering defined at Part 3 of Schedule A (Statement of Work) at para 3.1.1.c Maintainer	£
5.	Option for additional 5 years Integrated Logistics Support as defined at Schedule A (Statement of Work) Part 4 paragraph 4.5.	£
	<b>CONTRACT PRICE:</b>	£

Note- Items 1, 3 and 5 shall be a Firm Price subject to Clause 25 (Indexation) in accordance with the attached provisions of Contract

## ANNEX A TO SCHEDULE OF REQUIREMENTS

### AD-HOC TASKING RATES

The following rates shall apply to all AD-hoc tasking in accordance with Part 4 of Schedule A (Statement of Work):

#### Interim Contractor Logistic Support

Grade	Interim CLS Period (Months 1-15) Per Man Day Firm Price (VAT ex) UK Sterling	Interim CLS Period (Months 16-30) Per Man Day Firm Price (VAT ex) UK Sterling
Production	£	£
Engineering	£	£
Project Manager	£	£

#### Contractor Logistic Support

Grade	Optional CLS Period Year 1 of 5 Per Man Day Firm Price (VAT ex) UK Sterling	Optional CLS Period Year 2 of 5 Per Man Day Firm Price (VAT ex) UK Sterling	Optional CLS Period Year 3 of 5 Per Man Day Firm Price (VAT ex) UK Sterling	Optional CLS Period Year 4 of 5 Per Man Day Firm Price (VAT ex) UK Sterling	Optional CLS Period Year 5 of 5 Per Man Day Firm Price (VAT ex) UK Sterling
Production	£	£	£	£	£
Engineering	£	£	£	£	£
Project Manager	£	£	£	£	£

**THIS CONTRACT** is made on 11 May 2015

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** of Whitehall, London, SW1 (the “**Authority**”); and
- (2) **MTU Friedrichshafen GmbH** (company registration number DE 811121844 whose registered office is Maybachplatz 1, 88045 Friedrichshafen, Germany (the “**Contractor**”).

**WHEREAS:**

- (A) The Authority has a requirement for the supply of diesel generators for Type 23 warships (“the Ships”), together with associated spares, training and logistics support.
- (B) The Type 23 warships are now intended to be used beyond the original out of service date and the diesel generators are required to restore shortfalls in power margins and functionality to the Machinery Control and Surveillance (MCAS) system in order to extend the life of the Ships.
- (C) The diesel generators will be installed onto the Ships by a third party and the installation will take place during a limited period of time while each Ship is in dock for scheduled maintenance.

In consideration of the mutual covenants and undertakings set out below **THE PARTIES AGREE** as follows:

## **1. GENERAL CONDITIONS**

1.1 The following Defence Conditions of contract shall apply to the entire Contract:

DEFCON 5J	(Edn 07/08)	- Unique Order Identifiers
DEFCON 14	(Edn 11/05)	- Inventions And Designs – Crown Rights And Ownership of Patents And Registered Designs
DEFCON 15	(Edn 02/98)	- Design Rights and Rights to Use Design Information
DEFCON 16	Edn 10/04	- Repair and Maintenance Information
DEFCON 21	(Edn 10/04)	- Retention of Records
DEFCON 23	(Edn 08/09)	- Special Jigs, Tooling and Test Equipment
DEFCON 68	(Edn 11/12)	- Supply of Data for Hazardous Articles, Materials and Substances
DEFCON 76	(Edn 12/06)	- Contractor’s Personnel at Government Establishments
DEFCON 82	(Edn 07/13)	- Special Procedure for Initial Spares
DEFCON 90	(Edn 11/06)	- Copyright

DEFCON 91	(Edn 11/06)	- Intellectual Property Rights in Software
DEFCON 117	(Edn 10/13)	- Supply of Documentation for NATO Codification Purposes
DEFCON 126	(Edn 11/06)	- International Collaboration  <i>(Note: For the purposes of Clauses 2 and 3 the period shall be for as long as the equipment remains in service with the UK armed forces.)</i>
DEFCON 129	(Edn 10/13)	- Packaging (For Articles Other Than Munitions)
DEFCON 129J	(Edn 07/08)	- The Use of Electronic Business Delivery Form
DEFCON 501	(Edn 05/13)	- Definitions and Interpretation
DEFCON 502	(Edn 06/08)	- Specification
DEFCON 503	(Edn 07/05)	- Amendments to Contract
DEFCON 507	(Edn 10/98)	- Delivery
DEFCON 509	(Edn 09/97)	- Recovery of Sums Due
DEFCON 513	(Edn 06/10)	- Value Added Tax
DEFCON 515	(Edn 10/04)	- Bankruptcy and Insolvency
DEFCON 516	(Edn 04/12)	- Equality
DEFCON 518	(Edn 11/12)	- Transfer
DEFCON 520	(Edn 07/11)	- Corrupt Gifts and Payments of Commission
DEFCON 521	(Edn 04/12)	- Sub-Contracting to Supported Businesses
DEFCON 522	(Edn 07/99)	- Payment
DEFCON 522J	(Edn 05/03)	- Payment under P2P
DEFCON 523	(Edn 03/99)	- Payment of Bills Using the Bankers Automated Clearing Service (BACS) System
DEFCON 524	(Edn 10/98)	- Rejection
DEFCON 525	(Edn 10/98)	- Acceptance
DEFCON 526	(Edn 08/02)	- Notices
DEFCON 527	(Edn 09/97)	- Waiver
DEFCON 528	(Edn 05/12)	- Overseas Expenditure, Import and Export Licences
DEFCON 529	(Edn 09/97)	- Law (English)
DEFCON 530	(Edn 07/04)	- Dispute Resolution (English Law)
DEFCON 531	(Edn 05/05)	- Disclosure of Information

DEFCON 532A	(Edn 06/10)	- Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)
DEFCON 534	(Edn 06/97)	- Prompt Payment (Sub-Contracts)
DEFCON 537	(Edn 06/02)	- Rights of Third Parties
DEFCON 538	(Edn 06/02)	- Severability
DEFCON 539	(Edn 08/13)	- Transparency
DEFCON 566	(Edn 09/13)	- Change of Control of Contractor
DEFCON 601	(Edn 10/04)	- Redundant Materiel
DEFCON 602A	(Edn 12/06)	- Deliverable Quality Plan
DEFCON 604	(Edn 11/04)	- Progress Reports
DEFCON 606	(Edn 10/97)	- Change and Configuration Control Procedure
DEFCON 608	(Edn 10/98)	- Access and Facilities to be Provided by the Contractor
DEFCON 609	(Edn 06/14)	- Contractor Records
DEFCON 611	(Edn 07/10)	- Issued Property
DEFCON 612	(Edn 10/98)	- Loss of or Damage to the Articles
DEFCON 613	(Edn 06/97)	- Authorisation of Work (PDS Contracts)
DEFCON 614	(Edn 09/03)	- Default
DEFCON 619A	(Edn 09/97)	- Customs Duty Drawback
DEFCON 621B	(Edn 10/04)	- Transport (if the Contractor is Responsible for Transport)
DEFCON 624	(Edn 11/13)	- Use of Asbestos in Arms, Munitions or War Materials
DEFCON 632	(Edn 08/12)	- Third Party Intellectual Property – Rights and Restrictions
DEFCON 637	(Edn 08/99)	- Defect Investigation And Liability
DEFCON 642	(Edn 06/97)	- Progress Meetings
DEFCON 643	(Edn 06/14)	- Price Fixing
DEFCON 644	(Edn 06/13)	- Marking of Articles
DEFCON 646	(Edn 10/98)	- Law And Jurisdiction (Foreign Suppliers)
DEFCON 647	(Edn 09/13)	- Financial Management Info
DEFCON 649	(Edn 07/99)	- Vesting

DEFCON 656	(Edn 03/06)	- Break
DEFCON 694	(Edn 02/12)	- Accounting For Property Of The Authority
DEFCON 697	(Edn 07/13)	Contractors on Deployed Operations (CONDO)

- 1.2 In addition to the above the following DEFFORMs apply to the Contract:
- DEFFORM 30 (Edn 10/13) - The Electronic Transactions Agreement at Appendix 4
  - DEFFORM 111 (Edn 10/13) - Addresses and other Information at Appendix 5
  - DEFFORM 315 (Edn 02/98) - Contract Data Requirements at Appendix 6

**SPECIAL CONDITIONS**

**2. DEFINITIONS AND INTERPRETATIONS**

- 2.1 In the Contract, where the first letter of a word is capitalised, it is a defined term as per the context it is used in or it is found in Clause 2.2 of these Terms and Conditions.
- 2.2 In the Contract, terms defined in DEFCON 501 shall have the same meaning given therein and the following terms shall have the following meanings:

<b>“Amendment to Contract”</b>	means an amendment to this Contract as described in these Terms and Conditions, found at Clause 22 Amendment to Contract and Clause 21 Contract Change Procedure.
<b>“Acquisition Operating Framework (AOF)”</b>	has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
<b>“Ad-Hoc Tasks</b>	means the tasks described in Clause 20.2 of these Terms and Schedule A (SOW)
<b>“Article(s)”</b>	means all goods (excluding Services) which the Contractor is required to supply under the Contract;
<b>“Authority”</b>	'the Authority' means the Secretary of State for Defence;
<b>“Authority Safety Officer”</b>	has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
<b>“Authority’s Commercial Manager”</b>	means the person appointed as such by the Authority as detailed in Box 1 of the Appendix 5 to Contract (DEFFORM 111);
<b>“Authority’s Project Manager”</b>	means the person detailed in Box 2 of the Appendix 5 to Contract (DEFFORM 111);

<b>“AQAP”</b>		means NATO Quality Assurance Procedural Requirements;
<b>“Base Spares”</b>		has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
<b>“Business Day”</b>		means any day excluding: <ul style="list-style-type: none"><li>i. Saturdays, Sundays and public and statutory holidays in the UK; and</li><li>ii. Privilege days in the UK notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and</li><li>iii. Such periods of holiday closure of any of the Contractor’s premises in the UK at which the Contractor Deliverables are being performed or delivered of which the Authority is given written notice by the Contractor at least 10 Business Days in advance.</li></ul>
<b>“ Commercial Off The Shelf (COTS)”</b>		has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
<b>“Comprehensive Royal Naval Inventory Systems Project (CRISP)“</b>		has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
<b>“Consumable”</b>		has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
<b>“Contingency Spares”</b>	<b>Support</b>	has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
<b>“Contract”</b>		means these Terms and Conditions and the attached Schedules and Annexes;
<b>“Contract Dates”</b>	<b>Delivery</b>	means the delivery dates specified at Schedule B (Delivery Plan);
<b>“Contractor”</b>		means the person who, by the Contract, undertakes to supply the Contractor Deliverables for or to the Authority. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority.
<b>“Contractor Default ”</b>		means any one or more of the following: <ul style="list-style-type: none"><li>(a) a material breach by the Contractor of any of</li></ul>

its obligations under this Contract;

(b) event which may lead to the Authority having the right to terminate the Contract in accordance with Clause 23 Contract Termination, including:

- i. Breach of any of the following DEFCONS
  - a. DEFCON 68 (Supply of Data for Hazardous Articles, Materials and Substances);
  - b. DEFCON 515 (Bankruptcy and Insolvency);
  - c. DEFCON 516 (Equality);
  - d. DEFCON 520 (Corrupt Gifts and Payments of Commission);
- ii. Where any Key Performance Indicator continues to display a RED for 3 (three) consecutive months
- iii. Failure to satisfy the Authority's requirements following a Change of Control in accordance with Clause 27.8
- iv. Failure to provide a correctly executed Parent Company Guarantee where requested by the Authority in accordance with Clause 28 (Parent Company Guarantee).

**“Contractor Deliverables”** means the Articles and Services that the Contractor is to provide under this Contract as set out in Items 1 to 5 of the SOR and Schedules A and B;

**“Contract Price”** has the meaning set out in Clause 8.1;

**“Contractor’s Safety Manager”** has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);

**“Deliverable Information”** means the information to be provided by the Contractor to the Authority in accordance with Schedule A (Statement of Work) as listed in the Document Requirements List (DRL) at Schedule B (Delivery Plan);

**“Delivery Dates”** means the dates for the delivery of Contractor Deliverables and Documentation as defined at Schedule B (Delivery Plan);

**“Design”** means the Installation Solution (IS) prepared by the Design Management Service (DMS), Contractor or Sub-contractors and all Design

Documents, which are necessary to meet the Authority's requirements in accordance with the Contract;

- “Design Authority Maintenance Schedules (DAMS)”** has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
- “Design Documents”** means any plan, sketch, drawing (including setting out drawings), calculation, model, description, mock-up, proposal, report, specification, or any other document, group of documents, computer generated design, software, disk, microfilm or other thing whatsoever prepared by the DSA, Contractor or Sub-contractors in the performance of the Contract for or in connection with the Design;
- “Diagnostic Test Spares”** has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
- “Dockyard Authority”** has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
- “Effective Date (of Contract)”** means the start date of the Contract 11 May 2015;
- “Engines”** has the meaning as given in paragraph 1.3 of Schedule A (Statement of Work);
- “Equipment Set”** means one complete ship set of Lot 1 equipment as specified at Schedule A (Statement of Work). The Price for one Equipment Set shall be one twelfth of the total value of SOR Item 1:
- “Exit Period”** means the period specified in paragraph 4.1.2 of Schedule H (Exit Management Plan)
- “Exit Plan”** means the plan to be provided by the Contractor in accordance with Clause 29 (Exit Management);
- “Firm Price”** means a price, agreed for the Contractor Deliverables which is not subject to variation.
- “Fixed Price”** means a price, agreed for the Contractor Deliverables that is subject to variation in accordance with Clause 25 (Indexation).
- “Guarantee Defect”** means any defect in equipment once installed occurring in the Guarantee Defects Period as further defined in Clause 13;
- “Guarantee Defects”** means the period specified in Clause 13;

**Period”**

<b>“Implementation Plan”</b>	means the plan to effect the benefits of gainshare;
<b>“Interim Contractor Logistic Support”</b>	has the meaning as described in paragraph 4.4 of the Statement of Work.
<b>“Key Milestones”</b>	means those critical milestones identified at Schedule D (Payment Plan) for which failure to achieve may invoke Clause 23 Termination
<b>“Man Day”</b>	Means 8 hours per day from Monday to Friday
<b>“Milestones”</b>	means those milestones identified at Schedule D (Payment Plan) which instigate a payment if satisfactorily met
<b>“Milestone Payment Plan”</b>	means as described in Schedule D (Payment Plan);
<b>“Officer(s)”</b>	means the persons holding from time to time any of the Offices, or the Officers appointed by the Authority;
<b>“Parties”</b>	means the parties to this Contract, being the Authority and the Contractor and “Party” shall include either party hereto according to the context;
<b>“Performance Deductions/Moderations”</b>	means the sums which the Authority may deduct from a payment due to the Contractor in accordance with Clause 9 (Payment) and Schedule C (Contract Performance Management);
<b>“Performance Failures”</b>	means failure to deliver all or any part of the Contractor Deliverables in accordance with the Performance Levels;
<b>“Performance Levels”</b>	means the performance criteria and performance requirements levels to which the Contractor shall deliver the Contractor Deliverables, as detailed in Schedule C (Contract Performance Management);
<b>“Post Design Services Tasking Rates”</b>	means the rates as shown in Annex A to SOR;
<b>“Progress Meeting”</b>	means a meeting held at agreed intervals between the Contractor and the Authority as detailed in paragraph 2.5 of Schedule A (Statement of Work);

<b>“Purple Gate”</b>	means a process to ensure the regulation of materiel flow into the Joint Supply Chain for the sustainment of operational Theatres.
<b>“Quality Management Plan”</b>	Has the meaning as described at Clause 16
<b>“Requirements”</b>	means the work and technical specification for the Contractor Deliverables as described at Schedule A (Statement of Work) and its Annexes and the Schedule of Requirements (SOR);
<b>“RN Operations”</b>	refers to operations being undertaken by the Royal Navy requiring use of any of the Ships;
<b>“Security Aspects Letter”</b>	means a letter forwarded to the Contractor by the Authority in accordance with JSP 440 issued concurrently with this Contract;
<b>“Set To Work (STW)”</b>	means completion of ‘Harbour Acceptance Trial – Console’;
<b>“Services”</b>	means all services (excluding the supply of Articles) which the Contractor is required under the Contract to perform or to fulfil the Requirements as described at Schedule A (Statement of Work) and its Annexes and the Schedule of Requirements (SOR);
<b>“Ship”</b>	means the Authority’s Type 23 warships;
<b>“Ship’s Staff”</b>	means the crew (including officers) of the Ship;
<b>“Sub-contract”</b>	means a contract entered into between the Contractor and a Sub-contractor;
<b>“Sub-contractor”</b>	means a sub-contractor of the Contractor of any tier;
<b>“Support Period”</b>	means the period of time for which the Contractor is to provide support as described at Items 2, 3 and 5 of the Schedule of Requirements;
<b>“TAF”</b>	means a Task Approval Form for Ad-Hoc Tasks as described in Clause 20.2

### **3. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

3.1 The Contractor warrants and represents to the Authority that:

3.1.1 It is aware of the Authority’s intended purpose for the use of the Contractor Deliverables, namely:

3.1.1.1 The Contractor Deliverables will be integrated with other supplies procured from other contractors to the Authority;

3.1.1.2 The Contractor Deliverables will be incorporated into the Ships;

3.1.1.3 The Authority will be operating the Ships through the duration of this contract including but not limited to Royal Navy Operations, meaning the timely performance of the Contractor's obligations under this Contract is of the essence.

3.1.2 It can and shall deliver the Contractor Deliverables in full conformance to the Requirements, including, without limitation, to the required quality standards identified in the Contract and in accordance with Schedule B (Delivery Plan);

3.1.3 It is aware that installation of the Equipment is being undertaken by a third party during a limited period of time while each Ship is in dock for scheduled maintenance and therefore the timely delivery, accuracy and completeness of the Contractor Deliverables in accordance with the Contract is critical to the Equipment being installed.

3.2 The Contractor warrants, represents and undertakes that:

3.2.1 The Contractor's Deliverables meet the Requirements;

3.2.2 The Contractor's Deliverables will be carried out with reasonable care and skill and in accordance with generally recognised practices and standards in the industry;

3.2.3 The Contractor Deliverables will be brand new and free from:

3.2.3.1 Defects (whether actual or latent) in accuracy, completeness, design, development, integration (both physical and functional), engineering, manufacturing, construction, choice of materials, quality of workmanship and quantity/ quality of materials; and

3.2.3.2 Any computer viruses, worms, bombs or other harmful code which is or could be detrimental to the computer systems of the Authority or contractors to the Authority;

3.2.4 It shall comply with the provisions of the Security Aspects Letter

3.2.5 The Contractor Deliverables are and shall be of satisfactory quality, safe in operation and fit for their intended purpose which is set out in the Contract;

3.2.6 The following materials have not been and will not be incorporated into the Contractor Deliverables: (1) asbestos; (2) cadmium; (3) beryllium; (4) brittle materials, in particular grey cast iron; (5) materials which cause irritation or give rise to toxic fumes when subjected to high temperature or flame; (6) viton and (7) materials as identified as Substances of Very High Concern as restricted by the REACH Regulations save and except where such materials have been specifically declared by the Contractor;

3.2.7 It has complied, and the Contractor Deliverables shall comply, with the Montreal Protocol, as amended;

3.2.8 It can and shall continue to adhere to all UK hazardous materials regulations and all UK health, safety, environmental and labelling regulations including, without limitation the UK Control of Substances Hazardous to Health Regulations 2002 ('COSHH') and that the Contractor Deliverables will be safe and without risk to health at all times (whether during installation, use, removal and/or disposal);

3.2.9 It has, can and shall obtain all necessary export and import licences, permits or other UK and foreign government authorisations in such timeframes so as to support Schedule B (Delivery Plan);

3.2.10 It shall perform the Contractor Deliverables in accordance with such sound engineering practice as would be reasonable taking due cognisance of the nature of the work and the effects of any non-performance of such work; and

3.2.11 It shall ensure that each of its personnel involved in performing the Contract has the appropriate qualifications, experience and competencies.

3.2.12 The draft documents provided as part of the Contractor's proposal that are acceptable to the Authority shall not materially change following contract award and subsequent agreement between the Authority and the successful Contractor.

3.3 Notwithstanding or to the detriment of any existing or future contractual commitments between the Authority and the Contractor outside of this Contract, the Contractor acknowledges and represents to the Authority it can perform the Work in accordance with the Contract.

3.4 The Contractor acknowledges that the Authority has relied upon the Contractor's acknowledgements, warranties, representations and undertakings.

#### **4. DURATION**

4.1 The Contract shall commence on the Effective Date shown on the Schedule of Requirements (SOR) and shall remain in place until all obligations have been fulfilled in accordance with the Contract or until earlier termination of all or all remaining parts of this Contract in accordance with Clause 23(Termination).

#### **5. PRECEDENCE OF DOCUMENTS**

5.1 Should there be any discrepancy between any aspects of the documentation under this Contract then the order of precedence of the documentation shall be as follows: -

- Schedule of Requirements (SOR);
- Special Conditions of Contract;
- General Conditions of Contract; and
- The Schedules of the Contract.

#### **6. DISCREPANCIES, ERRORS AND OMISSIONS**

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

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

6.3 Where the Parties fail to reach agreement within 10 (ten) Business Days of the notice and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the dispute resolution procedure in accordance with DEFCON 530

#### **7. CONTRACTOR OBLIGATIONS**

7.1 The Contractor shall deliver the Contractor Deliverables in accordance with Schedule A (Statement of Work), and shall perform its obligations under this Contract in accordance with Schedule B (Delivery Plan), Schedule C (Contract Performance Management), Schedule E (Relationship Management Plan).

7.2 Without prejudice to the generality of the foregoing, the Contractor shall carry out all its duties and obligations under this Contract (including design, manufacture and project management) with the skill, diligence, care and attention reasonably expected of a contractor experienced in fulfilling projects of a similar size, scope, complexity and value to the subject matter of the Contract.

7.3 No acceptance, payment, authorisation, consent, comment, suggestion, requirement, proposal, consideration, inspection or approval of designs or other audit or inspection by the Authority or its agents regarding all or any aspect of the Contractor Deliverables to be supplied under the Contract shall derogate from the responsibility of the Contractor for ensuring that the Contractor Deliverables comply and function in accordance with the Requirements set out in the Contract.

7.4 The Contractor shall perform its obligations in compliance with all applicable legislation and standards, regulations including, but not limited to those relating to health and safety and environment, as may be amended from time to time.

7.5 The Contractor shall maintain continuity of its performance in accordance with its Business Continuity Management Plan (BCMP) which shall as a minimum:

7.5.1 Be provided to the Authority within 3 months of the Effective Date of Contract and agreed with the Authority within 6 months of the Effective Date of Contract.

7.5.2 Set out the arrangements that are to be invoked to ensure that the business processes and operations, required by the Contractor to provide the support covered under this Contract, remain supported including but not limited to:

7.5.2.1 The alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the business processes and operations; and

7.5.2.2 The steps to be taken by the Contractor upon resumption of the business processes and operations in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption

7.5.3 Be reviewed (together with the risk analysis on which it was based) on a regular basis and as a minimum once every 12 (twelve) months or as otherwise agreed with the Authority.

7.6 The Contractor shall produce a risk management plan and associated risk register in accordance with Schedule A (Statement of Work).

7.7 The Contractor shall attend Progress Meetings, which shall be held in accordance with the Requirements of Schedule A (Statement of Work).

7.8 For the purposes of DEFCON 604, the Contractor shall submit progress reports to the Authority's Project Manager in accordance with Schedule A (Statement of Work).

7.9 The Contractor shall ensure that all Contractor Deliverables, whether or not for incorporation, are of good quality and conform to the standards specified in the Contract or where no such standards are specified, with the industry-appropriate standards and/or standard codes of practice. The Contractor's attention is drawn to the provisions of DEFCON 524.

7.10 The Contractor shall promptly provide such information (including copies of any documents and Design Documents) in relation to the Design and/or any part of the Design including any Design Documents as the Authority may request.

7.11 The Contractor shall maintain a current quality assurance registration, applicable to all activities to be undertaken under the Contract and shall ensure that the Contract is carried out in conformity with the quality requirements of ISO 9001.

7.12 The Contractor shall support the orderly transition of information and knowledge to any third party contractor of CLS services at the expiry of the Interim CLS period or at the expiry of the 5 (five) year option for Item 5 of the SOR, should the Authority exercise such option.

## **8. PRICE**

8.1 The Contract Price is the price for the Contractor Deliverables as set out in the Schedule of Requirements and payable in accordance with Clause 9 and Schedule D (Payment Plan).

8.2 In the case of a contract being placed by the Contractor on one or more of its Sub-Contractors outside the UK, duty shall not be levied on any Contractor Deliverables as they will be imported into the UK in accordance with the process in Clause 19 (Licences).

8.3 The Contract Price shall:

8.3.1 be a Firm Price for 5 (five) years from the Effective Date and shall be a Fixed Price thereafter;

8.3.2 exclude Value Added Tax (VAT), which shall apply as described in DEFCON 513;

8.3.3 be inclusive of all travel and subsistence costs, disbursements and expenses; and

8.3.4 be in pounds sterling.

8.4 The pricing of any change made in accordance with Clause 21 (Contract Change Procedure) shall be calculated in accordance with the rates set out in the Schedule J (Contractor Pricing Breakdown)

8.5 The pricing of Ad-Hoc Tasks shall be calculated in accordance with the Contract Price set out in Annex A to the Schedule of Requirements.

## **9. PAYMENT**

9.1 Payment shall be authorised by the Authority's Project Manager and made through the Defence Electronic Commerce Service / Purchase to Payment (DECS/P2P) in accordance with DEFCON 5J, DEFCON 522J and this Clause 9

### **9.2 Milestone Payments**

9.2.1 The Contractor shall be entitled to request payment for the achievement of Milestones in accordance with Schedule D (Payment Plan) provided that: .

9.2.1.1 the Contractor has met the stated Milestone for which the payment is sought, and completed all work comprised therein; and

9.2.1.2 the Authority has signed a completed Milestone Acceptance Form in accordance with Appendix 2 to this Contract; and

9.2.1.3 the Milestones have been completed sequentially (unless otherwise agreed between the Parties).

### **9.3 Contract Payments**

9.3.1 The Contract Price for Item 1a and Item 3 and Item 5 (if the option is exercised) of the Schedule of Requirements shall be paid against the achievement of Key Performance Indicators (KPIs) as set out in Schedule C (Contract Performance Management).

9.3.2 The KPIs shall be measured monthly in accordance with Schedule C (Contract Performance Management) and paid quarterly in accordance with Schedule D (Payment Plan).

## **10. DELIVERY**

10.1 The Contractor shall deliver the Contractor Deliverables in accordance with Schedule B (Delivery Plan) and the item shall be delivered upon confirmed receipt at the delivery site by the Authority's authorised representative.

10.2 . The Contractor shall be responsible for delivery (including payment of any duty or taxes) to the delivery site.

10.3 The Contractor shall not be responsible for the offloading of Contractor Deliverables on arrival at site.

10.4 The Authority may vary the delivery arrangements as set out in Schedule B (Delivery Plan) in accordance with the Contract Change Procedure at clause 21 of this Contract.

10.5 Where, after delivery, an Article is rejected by the Authority in accordance with DEFCON 524 that Article shall, for the purposes of the Contract, be considered as not having been delivered under the Contract and the property in that Article shall return to the Contractor unless a notice of objection has been issued to the Authority in accordance with DEFCON 524.

10.6 The Contractor shall pack and deliver the Contractor Deliverables in accordance with the terms of the Contract and Schedule A (Statement of Work). The packing and the package costs shall be included in the Contract Price.

### **10.7 Self to Self Delivery**

10.7.1 Where any Article to be supplied under the Contract is to be delivered otherwise than being handed over by the Contractor to the Authority, as where an Article is to be delivered by the Contractor to his own premises or to those of a subcontractor ('self-to-self delivery'), the risk in such Article shall (notwithstanding the provisions of DEFCON 612) remain vested in the Contractor until such time as the Article is handed over to the Authority.

### **10.8 Acceptance**

10.8.1 This Clause shall be in addition to the rights afforded under DEFCON 525 (Acceptance) and DEFCON 524 (Rejection). In the event of conflict between this condition and DEFCON 525 and DEFCON 524, this condition shall take precedence.

10.8.2 The system acceptance process shall be in accordance with the ITEAP (Annex E to Schedule A (Statement of Work) which shall be developed by the Contractor, in accordance with Schedule A (Statement of Work) within 30 (thirty) days of the Effective Date of Contract, and agreed between the Parties post contract signature. This document shall provide the process for acceptance / rejection of Contractor Deliverables in accordance with the requirements set out at Schedule A (Statement of Work)

10.8.3 Acceptance of any Contractor Deliverables rejected under this Clause or in accordance with DEFCON 524 shall not take place until all defects have been made good and the Contractor Deliverables re-delivered to and accepted by the Authority.

## **11. REMEDIES**

11.1 The Contractor shall be liable for and hereby indemnifies the Authority in full against all losses, liabilities, actions, claims, damages, compensation, obligations, injuries, costs and expenses (including legal costs and expenses) of whatever nature suffered by the Authority resulting from the negligence, breach of Contract or breach of statutory duty caused by the acts or omissions of the Contractor, its employees, Sub-Contractors or agents in their performance of the Contract or in connection with any defect in any item of the Contractor Deliverables whether brought in contract, tort, or otherwise up to a total amount not exceeding the Contract Price. This indemnity shall continue in force notwithstanding termination for whatever reason of the Contract.

11.2 Any termination or cancellation of the Contract by the Authority for whatever reason shall be without prejudice to any rights or remedies which may have accrued prior to termination or cancellation and the Authority shall use its reasonable endeavours to mitigate its loss on any termination.

11.3 The exclusions and limitations of liability set out in this clause 11.3 shall apply to all claims of any kind whether as a result of breach of contract or warranty, tort (including negligence), by way of indemnity or otherwise on the part of the Contractor, its employees, agents, Sub-Contractors or suppliers:

11.3.1 In the case of damage to property (other than the goods supplied under the Contract) the Contractor's liability shall be as specified in DEFCON 76. For the avoidance of doubt, the limit under DEFCON 76 shall be up to the level stated in Clause 11.1.

11.3.2 Nothing herein shall limit the liability of either Party for death or personal injury due to the negligence of a party or its employees.

11.3.3 Save in respect of Clause 11.3.2 or as expressly set out elsewhere in this Contract, a Party shall have no liability to the other Party in respect of any claim for indirect or consequential loss, including for the avoidance of doubt any loss of profit, business, production or revenue, howsoever caused.

11.4 For the avoidance of doubt the exclusions and limitations set out in this clause 11 shall apply where the Authority grants an extension of time or other relief for the reason of Contractor Default.

## 12. INSURANCE

- 12.1. The Contractor shall maintain the following primary insurance policies with insurers of international repute authorised to conduct business in the jurisdictions in which the Contractor deliverable is performed for the duration of the Contract, including any Option period(s):
- 12.1.1. **‘General Third Party Liability (Public and Products Liability) insurance’** of an amount not less than ten million pounds sterling (£10,000,000) per event or series of events in respect of loss of or damage to the property of the Authority or death, disease, illness or injury to persons resulting from the performance of the Contract.
- 12.1.1.1. The Contractor shall effect and maintain this insurance in respect of any Contractor Deliverables. Such product liability insurance must be commensurate with the exposure potential of the Contractor Deliverables when incorporated into the Ship.
- 12.1.1.2. The Contractor shall effect and maintain this insurance in respect of the Contractor’s employees being present on the sites of the Authority or such other sites as the Contract requires.
- 12.1.1.3. The Contractor shall ensure this insurance is in effect and maintained in respect of the agents or Sub-Contractors being present on the sites of the Authority or such other sites as the Contract requires.
- 12.1.2. **‘Employers Liability Insurance’** for an amount not less than ten million pounds sterling (£10,000,000), or if outside the UK the minimum amount required by the lex loci, for each and every event.
- 12.1.3. Any other insurance which the Contractor may, by law, be required to maintain.
- 12.2. If the Contractor is required to carry out work at any site requested by the Authority, the Contractor shall ensure that its legal liability insurances extend to dock side liability.
- 12.3. Save where such loss or damage is caused by or contributed to by the Authority or its employees, agents or Sub-Contractors, the Authority accepts no responsibility for damages to any property of the Contractor or personal property of the Contractor’s employees or Sub-Contractors while such property is on the Authority’s premises or Ship(s).

## 13. GUARANTEE DEFECTS PERIOD

- 13.1. For all Contractor Deliverables supplied under this Contract, the Contractor shall provide a Guarantee Defects Period which shall commence at first Set to Work (STW) of the relevant Equipment and shall end:
- 13.1.1. 24 (twenty-four) months after SAT (ME) for Ship 1 (one) and Ship 2 (two), and;
- 13.1.2. 12 (twelve) months after SAT (ME) for all subsequent Ships.
- 13.2. Contractor Deliverables supplied which are not installed on a Ship such as training equipment, Support and Test Equipment (S&TE) and spares, the Guarantee Defects Period shall end 12 (twelve) months after delivery or, in the case of the training engine, 12 (twelve) months from STW.
- 13.3. In the event that any defect arises relating to the Contractor Deliverables during the Guarantee Defects Period, (a ‘Guarantee Defect’) the Contractor shall

without delay repair or replace the Article, to the satisfaction of the Authority, at its own expense.

- 13.4. Where the Contractor carries out repairs or implements replacements to rectify a Guarantee Defect, the Guarantee Defects Period in respect of those repairs or replacements shall be 12 months from the date of replacement or repair, or the remainder of the original Guarantee Defects Period as described in Clauses 13.1 and 13.2.
- 13.5. Where a Guarantee Defect occurs, the Authority shall notify the Contractor in writing. The Contractor shall acknowledge receipt of notification of all Guarantee Defects within no more than 24 hours, setting out:
- 13.5.1. the proposed method of remedying the Guarantee Defects;
- 13.5.2. the timescales for doing so; and
- 13.5.3. any cost to the Authority where it is possible that the Contractor may make a claim under Clause 13.8. In such event, no work shall be undertaken until the Authority has approved such costs.
- 13.6. Wherever possible in remedying Guarantee Defects, the Contractor shall provide authorisation for remedial works or repairs to be carried out by the Authority's employees or subcontractors, including Ship Staff or Personnel. Where so authorised, the Authority's employees or subcontractors shall act as a Trusted Agent for the Contractor in relation to its obligations to remedy Guarantee Defects under this Contract. The Authority, its employees or subcontractors shall incur no liability where acting as authorised under this Clause and the liability of the Contractor for carrying out its obligations under this Contract shall in no way be reduced or derogated.
- 13.7. The Contractor shall remedy a Guarantee Defect, including delivery of repaired or replaced items to the Authority's Purple Gate, within 30 (thirty) working days of receipt of the Article or part at the Contractor's premises, unless otherwise agreed with the Authority.
- 13.8. After completion of the remedial work by the Contractor the Authority shall reimburse the Contractor any fair and reasonable costs incurred to the extent that the Authority is satisfied that any defects were not caused by:
- 13.8.1. the Contractor's neglect or default or the neglect or default of any agent or Sub-contractor of the Contractor; or
- 13.8.2. by any circumstances within the Contractor's control.
- 13.9. If the Contractor fails to comply with this Clause, the Authority may do anything necessary to make good any defects notified to the Contractor. The fair and reasonable costs and expenses incurred by the Authority in so doing shall be recoverable from the Contractor. The Authority shall use all reasonable endeavours to mitigate such costs and expenses arising from the defect.
- 13.10. The benefits of any warranty or guarantee provided by a Sub-Contractor for equipment under the Contract shall be transferred to the Authority.
- 13.11. Any warranty or guarantee provided by the Contractor for any Contractor Deliverables under the Contract may be transferred to a third party.
- 13.12. In the event that a Guarantee Defect is disputed or rejected by the Contractor, the matter shall be resolved between the Contractor and the Authority. The Contractor shall inform the Authority of such disputes in writing within 48 (forty eight) hours of the dispute being identified.

- 13.13. This condition shall apply in addition and without prejudice to any other rights and remedies available to the Authority.

### **Exclusions**

- 13.14. This Guarantee shall not apply in respect of damage caused by:
- 13.14.1. Contractor Deliverables not having been stored by the Authority in accordance with the Contractor's recommended procedures;
  - 13.14.2. Parts not approved by the Contractor being used to repair and maintain the Equipment, except where those parts are of the same or equivalent technical specification as the original Contractor-approved part and have been NATO codified as such;
  - 13.14.3. Any identity plate numbers, marks, warning or operating labels being altered, displaced or removed without the Contractor's consent.
  - 13.14.4. Any use or maintenance of the Article not in accordance with the instructions described in the Technical Manuals provided by the Contractor;
  - 13.14.5. Any use or maintenance of the Article performed by non-authorised personnel;
  - 13.14.6. War and peacekeeping operations resulting in battle damage;
  - 13.14.7. Misuse or neglect; and
  - 13.14.8. Any alterations, modifications or attachments made to the Article without the Contractor's approval.
- 13.15. The Contractor shall not be liable under this Guarantee to carry out:
- 13.15.1. Normal maintenance services, adjustments and the replacement of service items including, but not limited to, oils, filters and lubricants made in connection with such services; or
  - 13.15.2. Repairs to remedy fair wear and tear to any component.

## **14. FORCE MAJEURE**

- 14.1. If, by reason of any acts of nature, war, hostilities, national strikes, (a 'Force Majeure Event') the Contractor has been delayed in delivering the Contractor Deliverables, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give the Authority notice in writing of his claim for an extension of time.
- 14.2. The Authority shall allow the Contractor an appropriate extension of time in respect of any delay as is reasonable in the circumstances, provided always that the Contractor has used all reasonable endeavours to prevent any such delay.
- 14.3. The maximum extension of time granted under this Clause shall be 6 (six) months after which time the Authority may terminate in accordance with Clause 23.9(Termination for Prolonged Force Majeure).

## **15. SUB-CONTRACTS**

- 15.1. The Contractor shall be responsible for all aspects of its Sub-Contractor(s) performance(s) whether Sub-Contractors have been selected by the Contractor, nominated by the Authority, approved by the Authority as an alternative to a nominated Sub-Contractor, or otherwise employed on the Contract.

- 15.2. The Contractor shall ensure that each Sub-Contract placed by the Contractor shall be subject to the terms and conditions of this Contract where these are relevant, replacing 'Authority' with 'Contractor', and unless the context indicates otherwise shall include, but not be limited to the following:
- Contract Clause 17 – Documents, Drawings and Information
- 15.3. No work on the Contract may be sub-contracted by the Contractor without the prior written consent of the Authority which shall not be unreasonably withheld.

## **16. QUALITY ASSURANCE**

- 16.1. The Contractor and all its sub-contractors shall be registered as firms of assessed capability for quality assurance purposes as defined in BS EN ISO 9001:2008 A copy of the Contractor's current certificate covering the relevant activity shall be included in their Quality Management Plan.
- 16.2. In addition to the Requirements for quality assurance set out at Schedule A (Statement of Work), the Contractor shall be subject to all reasonable applicable standards.
- 16.3. All references to the Quality Assurance Representative (QAR) in documents, which form part of this Contract, shall be read as referring to the QAR as shown at Box 7 of DEFFORM 111 at Appendix 5 to the Contract.
- 16.4. The Authority reserves the right to inspect and examine at any time any part of the works or the management system or any activity or document produced by the Contractor and to carry out any investigations which are necessary to determine the quality and standards of the performance of work undertaken by the Contractor.
- 16.5. In addition to the provisions of DEFCON 609, quality assurance records shall be retained for 5 (Five) years after completion of all work under the Contract.

## **17. DOCUMENTS, DRAWINGS AND INFORMATION**

### **Supply of Drawings, Documents etc by the Authority**

- 17.1. All drawings, documents, design information and details of arrangements, models, mock-ups and samples provided by the Authority in connection with the Contract shall remain the property of the Authority as applicable and will be provided free of charge unless otherwise stated.
- 17.2. On expiry or earlier termination of this Contract, the Authority's Project Manager shall advise the Contractor of the method of disposal of all documentary and other information supplied in connection with this Contract

### **Supply of Drawings, etc by the Contractor**

- 17.3. Technical Handbooks, maintenance schedules, operating instructions, spare parts lists etc and/or any other documentation to be supplied by the Contractor shall be provided in accordance with the Schedule A (Statement of Work) in sufficient time to be reviewed by the Authority.
- 17.4. Documentation for inspection, tests or trials shall be provided in accordance with the SoW to the Authority's Project Manager at least 5 (five) Business Days prior to the inspection test or trial or such other period as may be stated at Schedule A (Statement of Work).

- 17.5. The approval and/or release by the Authority of any drawings, reports, specifications etc provided by the Contractor or the attendance of the Authority's representatives at any tests or trials shall in no way derogate from the Contractor's responsibilities under the Contract or otherwise or release the Contractor from any of his obligations under the Contract or otherwise.
- 17.6. The provisions of this Condition shall apply equally to any information (documents or drawings) provided to the Contractor by electronic means (e.g. drawings in AutoCAD) and to that provided in hard copy.

## **18. GOVERNMENT FURNISHED ASSETS (GFA)**

- 18.1. The Authority shall be responsible for providing the Government Furnished Assets (Equipment, Facilities, Information and Services (GFE/GFF/GFI/GFS)) to be supplied under the Contract as detailed at Schedule F (Government Furnished Assets).
- 18.2. The GFA shall at all times remain the property of the Authority; it shall be used in the provision of the Services under this Contract and for no other purpose, without the prior approval in writing of the Authority.
- 18.3. The Contractor shall be responsible for the management of all GFA in accordance with DEFCON 611 (Issued Property), DEFCON 694 (Accounting For Property Of The Authority).
- 18.4. Any and all Contractor Deliverables loaned in such a manner shall be identified in such a manner that ownership of the Contractor Deliverable(s) is indisputable during the duration of such loan.
- 18.5. Without prejudice and further to the provision of DEFCON 611 and DEFCON 694, the Contractor shall be responsible for storage, protection, maintenance and accounting for all Contractor Deliverables owned or supplied by the Authority.
- 18.6. Returnable crates, containers and packaging in which supplies are delivered will be on loan. These shall be despatched by the Contractor when empty at their cost, as instructed by the Authority's Project Manager.
- 18.7. At expiry or earlier termination of the Contract, in accordance with DEFCON 611, the Contractor shall provide to the Authority a list of all GFA holdings under the Contract. The Authority's Commercial Branch shall issue directions for the transfer, disposal or return to stores of all listed items, with which the Contractor shall comply.

## **19. LICENCES**

- 19.1. The Contractor shall be solely responsible for securing all licences necessary to enable him to meet all obligations and requirements of the Contract.

### **Import/Export Licences**

- 19.2. The Contractor shall be responsible for securing all export licences necessary to enable him to meet all obligations and requirements of the Contract.
- 19.3. The Authority warrants to the Contractor that this Contract qualifies for suspension of import duty under EU Council Regulation (EC) 150/2003.
- 19.4. The Authority shall within 20 (twenty) Business Days of the Contractor's request issue any necessary certificates to allow for suspension of import duty as required by the Contractor for the execution of the Contractor Deliverables.

## 20. INTEGRATED LOGISTICS SUPPORT (ILS)

### 20.1. Interim Contractor Logistics Support (CLS)

20.1.1. The Contractor shall provide Interim CLS as defined at Part 4 of Schedule A (Statement of Work) for a duration of 30 (thirty) calendar months commencing from SAT (ME) of the first Ship.

20.1.2. Defects identified in accordance with the provisions of Clause 13 (Guarantee Defects Period) shall not be charged as In-Service Support.

#### 20.1.3. Initial Spares

20.1.3.1. The Contractor shall provide the initial spares as listed at Schedule A (Statement of Work) and will be responsible for ensuring that the Initial Spares meet the requirements of DEFCON 82.

### 20.2. Ad-Hoc Tasks

20.2.1. Pursuant to Schedule A (Statement of Work) and Part 4 (Integrated Logistics Support) Technical Ad-Hoc Tasks may be raised by the authority using the Task Approval Form (TAF) at Appendix 3 and in accordance with the process described in Clauses 20.2.2 to 20.2.5 below:

20.2.2. The Authority's Project Manager shall complete Part 1 (Requirement) of the Form and forward to the Contractor;

20.2.3. The Contractor shall complete Part 2 (Quotation) of the Form and provide a Firm Price using the Post Design Services Tasking Rates to complete the work to the Authority's Project Manager;

20.2.4. The Authority shall assess the Quotation provided by the Contractor and once content the price is fair and reasonable for the requirement described in the TAF, the Authority shall complete Part 3 (Approvals) of the Form.

20.2.5. Upon Approval of the Form by the Authority, the TAF shall be forwarded onto the Contractor. The Contractor shall acknowledge the TAF within five (5) Working Days of receipt. The work described in the TAF shall not commence until the Authority has provided Approval.

20.2.6. The Authority's Commercial Manager shall issue a Contract Amendment periodically to add the authorised TAFs to the Contract at Schedule G (Record of Authorised Contract Changes).

### 20.3. Contractor Logistics Support (CLS) Option

20.3.1. The Contractor hereby grants to the Authority an irrevocable and mutually exercisable option to purchase a further 5 year period of Integrated Logistics Support (CLS) from expiry of the Interim CLS period in accordance with Item 5 of the SOR and the terms and conditions of this Contract, it being agreed that the Authority has no obligation to exercise such option.

20.3.2. The option price is shown at Item 5 of the SOR and shall be Firm Price until 01 March 2020 and shall then become Fixed Price as provided for in Clause 25 (Indexation).

20.3.3. The Authority shall have the right to exercise the option no later than 6 (six) months prior to the expiration of SOR Item 3.

#### 20.4.      **Obsolescence**

20.4.1. If the Contractor becomes aware that any Contractor Deliverables may or will be discontinued, or may or will become obsolete, it shall notify the Authority immediately in writing so that the Authority may, in its absolute discretion, make a “life time buy” on fair and reasonable terms..

### **21. CONTRACT CHANGE PROCEDURE**

21.1.      The Contract may only be amended (or changed) with the written authority of the Authority’s Commercial Manager in accordance with the following procedures:

21.2.      Either Party may request a change to the Contract by completing and signing the Contract Change Proposal Form (CCPF) at Annex A to Schedule G (Record of Authorised Contract Changes) and issuing it to the other Party.

21.2.1. Where requesting a change to the Contract, or where responding to a change request by the Authority’s, the Contractor shall submit a Firm Price quotation/proposal to undertake the work detailed at Part 1 of the CCPF. As a minimum the quotation must contain, but not be limited to:

- 21.2.1.1. break down including labour (hours and rates), materials, sub-contract, overheads and profit;
- 21.2.1.2. detail of all assumptions, dependencies, including but not limited to Authority dependencies;
- 21.2.1.3. a risk management plan detailing risk across the PGMU requirement;
- 21.2.1.4. details of how the change is to be developed and implemented;
- 21.2.1.5. a start date for the change.

21.2.2. The Authority shall consider the Contractor’s quotation and may seek clarification on an iterative basis. Any changes to the Contractor quotation shall be clarified in writing.

21.2.3. It shall be the Authority’s decision whether to accept or reject any change proposed by the Contractor.

21.2.4. The Authority shall accept/reject the Contractor’s quotation by signing and issuing the Contract Change Acceptance Form (CCAF) at Parts 2, 3 and 4 of CC PF. The CCAF shall be accompanied by a formal Contract Amendment. Where the Authority has accepted the Contractor’s quotation this shall be the Contractor’s authority to proceed. Only CCAFs, signed by the Authority’s Commercial Branch, shall be accepted by the Contractor. Unsigned CCAFs or CCAFs signed by anyone other than Authority’s Commercial Branch shall be returned to the Commercial Branch detailed at Box 1 of DEF ORM 111, (Appendix 5 to Contract).

21.2.5. Where the Authority grants an extension or other relief for reason of Contractor Default, all costs associated with such relief shall be borne by the Contractor, including any increased costs to be paid by the Authority to third parties which increase as a result of the relief granted to the Contractor, in particular in relation to extensions of time.

## **22. AMENDMENTS TO CONTRACT**

- 22.1. Notwithstanding the inclusion of DEFCON 503 and Clause 21 (Contract Change Procedure), only the Authority's Commercial Branch referred to in DEFFORM 111, (Appendix 5 to Contract) is authorised to vary the Terms and Conditions of the Contract. Such variation shall only have effect when agreed in writing.

## **23. CONTRACT TERMINATION**

- 23.1. Except as expressly set out in this Contract, upon termination of this Contract the Contractor shall not be entitled to payment for any:
- 23.1.1. loss of profit
  - 23.1.2. loss of opportunity; or
  - 23.1.3. losses of a similar type or character.

### **Voluntary Termination by the Authority**

- 23.2. The Authority shall be entitled to terminate all or part of this Contract pursuant to DEFCON 656 and in the event that the Authority terminates part of the Contract DEFCON 656 shall be applied in relation to that part of the Contract which is being terminated and its provisions construed accordingly. The notice period referred to in paragraph 1 of DEFCON 656 shall be three (3) calendar months and the Contractor shall be entitled to payment in accordance with DEFCON 656.

### **Termination for Contractor Default**

- 23.3. Subject to Clause 23.4 (Rectification), if a Contractor Default has occurred, the Authority shall be entitled to terminate all or part of this Contract by serving a termination notice on the Contractor stating:
- 23.3.1. that the Authority is terminating the Contract (in whole or in part) for Contractor Default; and
  - 23.3.2. the type and nature of the Contractor Default, giving reasonable details; and
  - 23.3.3. Where this Contract is terminated for Contractor Default, the Contractor shall be entitled to any approved and unpaid amounts outstanding at the time of termination (subject to any other provision of this Contract affecting the level of such payment and subject to DEFCON 614) in accordance with Schedule D (Payment Plan).

### **Rectification**

- 23.4. For the avoidance of doubt, Clauses 23.5 to 23.7 shall not apply where the Contract is terminated for Contractor Default following breach by the Contractor of:
- 23.4.1. DEFCON 68 (Supply of Data for Hazardous Articles, Materials and Substances);

- 23.4.2. DEFCON 515 (Bankruptcy and Insolvency);
- 23.4.3. DEFCON 516 (Equality);
- 23.4.4. DEFCON 520 (Corrupt Gifts and Payments of Commission);
- 23.5. Subject to Clause 23.4 above, where the Authority serves a termination notice in accordance with Clause 23.3 then the Contractor may within 5 (five) Business Days of receipt of a the termination notice propose to the Authority a rectification programme to rectify the Contractor Default.
- 23.6. If the Authority accepts the proposed rectification programme (such acceptance to be at the Authority's sole discretion) and it is implemented by the Contractor in full accordance with its terms, the termination notice referred to in Clause 23.3 shall be deemed to be revoked and this Contract shall continue.
- 23.7. If no acceptable rectification programme has been proposed by the Contractor pursuant to Clause 23.5 or the Contractor fails to rectify within the time period set out in the accepted rectification programme, the Authority may give further notice stating that this Contract shall terminate (in whole or in part) on a date which shall be no sooner than 30 (thirty) Business Days' time.
- 23.8. Where this Contract is terminated in accordance with Clause 23.7, the Contractor shall be entitled to any approved and unpaid amounts outstanding at the time of termination (subject to any other provision of this Contact affecting the level of such payment and subject to DEFCON 614) in accordance with Schedule D (Payment Plan).

#### **Termination due to prolonged Force Majeure**

- 23.9. The Authority may terminate this Contract in whole or in part thereof pursuant to Clause 14 (Force Majeure) by giving 30 (thirty) Business Days' written notice to the Contractor. The Contract shall terminate in accordance with the timescales detailed in the written notice. Where such a termination notice is served, the Contractor shall exit the Contract, or part thereof in accordance with Schedule H (Exit Plan) and payment shall be made for sums incurred to the date of termination in accordance with the calculation provisions set out in DEFCON 656, clauses 3, 4 and 5.

#### **24. CONTINUING OBLIGATIONS**

- 24.1. Save as otherwise provided for in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:
- 24.1.1. termination or expiry of this Contract shall be without prejudice to any accrued rights and obligations prior to termination or expiry; and
- 24.1.2. termination of this Contract shall not affect the continuing rights and obligations of the Parties under:
- Clauses 2 (Definitions and Interpretations), 5 (Precedence), Clause 7.12 (Contractor's Obligations and orderly transition), Clause 11 (Remedies), Clause 13 (Guarantee Defects Period), Clause 17 (Documents, Drawings and Information), Clause 18 (Government Furnished Assets), Clause 29 (Exit Management), Clause 30 (Publicity), Clause 31 (Confidentiality), Clause 32 (Intellectual Property Rights);

DEFCONS 14 (Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs), 15 (Design Rights and Rights to Use Design Information), 21 (Retention of Records), 90 (Copyright), 91 (Intellectual Property Rights in Software), 529 (Law (English)), 530 (Dispute Resolution (English Law)), 532A (Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)), 538 (Severability), 632 (Third Party Intellectual Property - Rights and Restrictions);

Schedules D (Payment Plan) and H (Exit Management): and

any other provision of this Contract which is expressed to survive termination or expiry or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

## **25. INDEXATION**

25.1 The price as stated at Clause 8 (Price) are Firm Price for 5 (five) years from the Effective Date. The prices do not include provision beyond this date for increases or decreases in the market price of the requirements. Any such variation to these prices, or other sums for which variation in accordance with this Clause 25 is provided for in the Contract, shall be calculated in accordance with the following formula:

$$V = P \left[ a + b \frac{O_i}{O_o} \right] - P$$

Where:

V represents the variation;

P represents the price at 11 May 2015 which shall be regarded as the Fixed prices (i.e. subject to variation) for the purposes of the price variation formula;

a represents the non-variable element (NVE) which shall be 0.1;

b represents the variable element which shall be 0.9;

a+b = 1.0;

O<sub>o</sub> represents the average Output Price Index figure for the period 1 May 2015 to 30 April 2016;

O<sub>i</sub> represents the average Output Price Index figure for the subject calendar year.

The Output Price Index to be applied in the above formula shall be the Output Producer Price Index for Electronic Sector, identified as K389 GSO sub-section - Machinery and equipment nec (SIC 2007) by the Office of National Statistics.

- 25.2 In the event that any changes occur to the basis of any of the Indices, (e.g. a revised statistical base) or where an index ceases to be published, during the period of the Contract and before final adjustment of the Contract Price(s), the Authority and the Contractor shall agree a fair and reasonable adjustment to the relevant Index, or agree a new index, or, if appropriate, shall agree revised formulae which will have substantially the same effect as those specified herein.
- 25.3 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.
- 25.4 Prices shall be adjusted annually 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.
- 25.5 Claims for payment shall be made in accordance with Clause 9 (Payment) using the latest annual average Output Price Index that can be calculated from published information. Payment shall be retrospectively adjusted, where appropriate, when the annual average Output Price Index for the year in question can be calculated from published information.
- 25.6 Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the requirements of Clause 9 (Payment) of the above have been met.
- 25.7 In the event of it becoming impossible or impracticable for any reason whatsoever to apply the index, such index or indices shall be substituted as may be agreed by the Parties, or, in absence of agreement, through the procedures set out in DEFCON 530 (Dispute Resolution).

## **26 GAINSHARE**

- 26.1 At any time during the Contract, the Contractor may make a proposal to the Authority for a new or alternative way of providing the Contractor Deliverables. Any proposal must clearly state that it is submitted for consideration under this Condition and shall include:
- 26.1.1 A business case for the new or alternative way the Contractor proposes to provide the Contractor Deliverables;
  - 26.1.2 Cost/benefit analysis that will consist of an outline of the costs that might be saved by the Authority (both direct and indirect);
  - 26.1.3 The costs which might be incurred by the Contractor or the Authority (both direct and indirect);
  - 26.1.4 The potential benefit(s) (financial or otherwise) to the Authority;
  - 26.1.5 Any impact on the Contract; and
  - 26.1.6 The gainshare ratio.

- 26.2 The Parties shall meet to discuss the proposal including the investment (financial or otherwise) to be contributed by both Parties, the estimated amount of saving, the gainshare ratio and the timing of any payments. The Contractor shall then submit a revised proposal to the Authority.
- 26.3 The Authority shall then assess the proposal and shall, in writing within 30 (thirty) Business Days (or such other time as agreed between the Parties), either accept it in principle, or reject it or offer recommendations or refinements in order for the Contractor to submit a revised proposal.
- 26.4 If and when the proposal is accepted in principle by the Authority in writing, the Contractor shall formulate an Implementation Plan which shall set out in more detail the way in which the Contractor intends that the proposal shall be implemented and the timetable for payments or adjustments to any element of the Contract Price.
- 26.5 The Authority shall be under no obligation to accept such proposal..

## **27 CHANGE OF CONTROL**

- 27.1 The Contractor shall notify the Authority, as soon as practicable, in writing of any material proposed Change of Control. The Contractor shall not be required to submit any information which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any Legislation governing the conduct of the Contractor or any member of the Contractor's Group in the UK or other jurisdiction where the Contractor may be subject to legal sanction arising from submission of such notification.
- 27.2 For the purposes of this Clause 'control' means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person and 'change' thereto shall be construed accordingly:
- 27.2.1 by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
  - 27.2.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor.
  - 27.2.3 and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.
- 27.3 Subject to Clause 27.6 below:
- 27.3.1 the Authority shall have no right to object to a proposed Change of Control; and
  - 27.3.2 the Contractor shall not be required to seek the Authority's consent to a Change of Control.
- 27.4 The notification referred to in Clause 27.1 shall be submitted to the Authority's Commercial Branch and to:
- Mergers & Acquisitions Team
  - Poplar
  - Level 2,
  - Abbey Wood South
  - Bristol

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- 27.5 Notification by the Contractor of any Change of Control shall not prejudice the existing rights of the Authority or the Contractor under this Contract, nor create or imply any rights of either the Contractor or the Authority additional to the Authority's right to receive that notification.
- 27.6 Where the Authority reasonably considers that the proposed Change of Control would be contrary to the defence or national security of the UK, then the Authority shall, within fifteen (15) Business Days of the date of receipt of the Contractor's notification pursuant to Clause 27.1 notify the Contractor in writing of its objection. Provided the Contractor has received such timely notification, the Change of Control shall not proceed until agreement with the Authority is established, pursuant to Clause 27.7 below.
- 27.7 The Authority shall, within ten (10) Business Days of the Authority's notification above meet with the Contractor (and/or a member of the Contractor's Group) to discuss the Authority's objection to a proposed Change of Control, and to endeavour to agree a resolution to allow such Change of Control to proceed.
- 27.8 Subject to Clause 23 (Contract Termination) in the event that there is a Change of Control contrary to the objection of the Authority on the grounds set out in Clause 27.6 the Authority shall be entitled to terminate this Contract for reason of Contractor Default.

## **28 PARENT COMPANY GUARANTEE**

- 28.1 The Authority reserves the right to request a Parent Company Guarantee from the Contractor's parent company. If this right is exercised, a correctly executed Parent Company Guarantee shall be delivered to The Authority within 10 Business Days.

## **29 EXIT MANAGEMENT**

- 29.1 The Contractor shall develop Schedule H (Exit Management) within 3 (three) months of the Effective Date of Contract and the Parties shall agree the final form of Schedule H (Exit Management) within 6 (six) months of the Effective Date of Contract. The Parties shall comply with Schedule H (Exit Management) in the event of termination or expiry of the Contract.

## **30 PUBLICITY**

- 30.1 Unless expressly permitted in writing by the Authority, the Contractor shall not publish or permit to be published either alone or in conjunction with any other person, any information, Contractor Deliverables, photographs or other illustrations relating to the business of the Authority, its servants, agents or employees in relation to this Contract.

## **31 CONFIDENTIALITY**

- 31.1 This Condition shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality condition of the Contract.
- 31.2 For the purposes of this Condition 'Controlled Information' shall mean any information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is

identified by the legend 'Controlled Information' or other approved legend notified to the Contractor. Controlled Information shall exclude information provided by oral communication.

31.3 The Contractor shall:

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

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

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

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

31.3.5 act diligently to ensure that:

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

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

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

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

31.4.2 maintain this register for the duration of the Contract and for two years following completion of the Contract.

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

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

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

31.4.6 that the information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the parties;

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

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

31.4.9 from its records, that the information was derived independently of the Controlled Information;

31.4.10 that copying use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

## **32 INTELLECTUAL PROPERTY RIGHTS**

### **Technical Publications**

- 32.1 The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any Technical Publication called for under the Schedule or any part thereof including any such part when incorporated in any amended or extended version of such Technical Publication, and to circulate, use or have used said Technical Publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose but not for the purpose of manufacturing equipment to which the Technical Publication relates. Where any repair, maintenance, operation and training information is utilised or generated in performance of the Contract but not specified in the Schedule as a Technical Publication then this will be construed to be subject to this Technical Publications Clause unless the Authority agrees in writing on a case by case basis to the contrary.
- 32.2 The Contractor shall not place any subcontract or order involving the design or development of equipment required under this Contract without the prior written consent of the Authority.

### **Sub-Contracts**

- 32.3 Unless otherwise agreed, such consent will be conditional on the proposed sub-contractor concluding a direct agreement with the Authority which provides the Authority with rights in information consistent with those rights in the Contract. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the subcontractor. If, in any case the Contractor is unable to comply with this condition he shall report the matter to Authority's Commercial Manager and await further instructions before placing the subcontract or order.

## **33 ENTIRE AGREEMENT**

- 33.1 Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.