



Ministry  
of Defence



# **Terms and Conditions of Contract for MSS/092 – In Service Support of Naval Valves of Hale Hamilton Manufacture**

By and Between:

DES Ships Commercial - Marine Systems Support  
Ministry of Defence, Birch 3c #3331,  
Abbey Wood, Bristol, BS34 8JH

and

Hale Hamilton (Valves) Limited

(together “the Parties”)

## Document Administration & Authority

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# Table of Contents

## **Part A General Conditions**

•	Defence Conditions	6
•	Intellectual Property Rights	8
•	Quality Assurance Standards and Conditions	8
•	Defence Forms	8

## **Part B Special Conditions**

### **Core Clauses**

1.	Definitions and Interpretations	10
2.	Contract Term	15
3.	Precedence of Documents	15
4.	Formal Amendments to the Contract	16

### **Parties Rights and Obligations**

5.	Obligations of the Authority	17
6.	Obligations of the Contractor	17
7.	Standards of Performance	17
8.	Contractor Related Parties	17
9.	Authority Related Parties	18
10.	Authority Disclosed Data	18
11.	Contractors Due Diligence	18
12.	No Relief	18
13.	Fraudulent Statements	19
14.	Progress Reporting	19
15.	Quality Assurance	19
16.	Safety Management	19
17.	Obsolescence	19
18.	Environmental Management	20
19.	CE Marking	20

### **Tasking, Pricing and Performance**

20.	Tasking Process	20
21.	Price	20
22.	Option Period and Prices	21
23.	Variation of Fixed Prices	21
24.	Activity 4 Pricing	23
25.	Performance Mechanism	24

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26.	Key Performance Indicators	26
27.	Payment	27

**Financial Inspection and Review**

28.	Rights of Audit	28
39.	Open Book Accounting	29

**Intellectual Property, Information and Governance**

30.	Intellectual Property Rights (IPR)	29
31.	Sub Contracts	31
32.	Access to Material Information/Data/Software ('Information')	31
33.	Cyber Security	32
34.	Transfer of Undertakings (Protection of Employment)	32
35.	Publicity	32
36.	Information Regarding Prosecution of Proceedings	32

**Obligations to Assist Post Termination of Expiry**

37.	Exit Plan -	32
38.	Earned Value Management	35
39.	Termination	36

## List of Annexes

A	Statement of Support Requirements
B1	Price Schedule
B2	Asset Register
C	Obsolescence Management Template
D	Work in Progress Register
E	Performance Management Record
F	Not Used
G	Certificate of Conformity
H	Task Approval Form
I	DEFFORM 177 – Subcontractors Agreement
J	DEFFORM 129J – The Use of the Electronic Business Delivery Form
K	Exit Plan
L	DEFFORM 532B -Protection of Personal Information
M	DEFFORM 315 – Contract Data Requirement
N	Intellectual Property Rights Declaration
O	DEFFORM 68 – Hazardous Articles, Materials or Substances Statement by the Contractor
P	DEFFORM 528 - Import and Export Licenses
Q	Security Aspects Letter
R	Master Equipment Definition Sheet
S	DEFFORM 539A - Contractors Commercially Sensitive Information Form
T	TUPE

Appendix	Deform 111 – Addresses and Other Information

## Part A. General Conditions

### Defence Conditions

The Parties agree that the following standard conditions shall apply to this Contract in addition to any DEFCONs expressly incorporated in Part B (Special Conditions):

DEFCON	Edition	Description
5J	18/11/16	Unique Identifiers
21	10/04	Retention of Records
23	08/09	Special Jigs, Tooling and Test Equipment
68	02/19	Supply of Data for Hazardous Articles, Materials and Substances
76	12/06	Contractor's Personnel at Government Establishments
82	11/16	Special Procedure for Initial spares
113	02/17	Diversion Orders
117	10/13	Supply of Documentation for NATO Codification Purposes
126	11/06	International Collaboration
127	12/14	Price Fixing Condition for Contract of Lesser Value Note: This DEFCON Shall be applicable to any future amendments <£250 requiring pricing activities.
129	04/19	Packaging (for Articles other than Munitions)
129J	18/11/16	The Use of the Electronic Business Delivery Form
501	11/17	Definitions and Interpretations
502	05/17	Specification Changes
503	12/14	Formal Amendments to Contract <b>Note:</b> For the purposes of Clause 1 of DEFCON 503 the Authority's duly authorised representative shall be the Commercial Branch named at Box 1 of Appendix to Contract.
507	10/18	Delivery
513	11/16	Value Added Tax
514	08/15	Material Breach
515	02/17	Bankruptcy and Insolvency
516	04/12	Equality
518	02/17	Transfer

520	05/18	Corrupt Gifts and Payment of Commission
522	11/17	Payment and Recovery of Sums Due
524	10/98	Rejection <b>Note:</b> For the purposes of Clause 4, the period specified shall be eighteen months
525	10/98	Acceptance <b>Note:</b> For the purposes of Clause 4, the period specified shall be eighteen months.
526	08/02	Notices
527	09/97	Waiver
528	07/17	Overseas Expenditure, Import and Export Licenses <b>Note:</b> For the purposes of Clause 16, the periods are 30 calendar days.
529	09/97	Law (English)
530	12/14	Dispute Resolution (English Law)
531	11/14	Disclosure of Information
532B	05/18	Protection of Personal Data
534	06/17	Subcontracting and Prompt Payment
537	06/02	Rights of Third Parties
538	06/02	Severability
539	08/13	Transparency
550	02/14	Child Labour and Employment Law
566	12/18	Change of Control of Contractor
601	04/14	Redundant Material
602A	12/17	Deliverable Quality Plan
604	06/14	Progress Reports
605	06/14	Financial Reports
606	06/14	Change and Configuration Control Procedure
608	10/14	Access and Facilities to be Provided by the Contractor
609	08/18	Contractor's Records
611	02/16	Issued Property
612	10/98	Loss of or Damage to the Articles
619A	09/97	Customs Duty Drawback
620	05/17	Contract Change Control Procedure
621A	06/97	Transport (if the Authority is responsible for Transport)
624	11/13	Use of Asbestos in Arms, Munitions or War Materials
625	10/98	Co-Operation on Expiry of contract
627	12/10	Requirement for a Certificate of Conformity
630	02/18	Framework Agreements
637	05/17	Defect Investigation and Liability
642	06/14	Progress Meetings
644	07/18	Marking of Articles
646	10/98	Law and Jurisdiction (Foreign Suppliers)
647	04/19	Financial Management Information <b>Note:</b> 16.4 and 16.5 of the Performance and Financial Reporting section, under Activity 1 of the Statement of Support Requirements replace the requirement called up in Clause 2 of this DEFCON.
649	12/16	Vesting

656B	08/16	Termination for Convenience – over £5M Note: the periods of notice referred to in Clauses 1 and 6(b) shall be six weeks and three months respectively.
658	10/17	Cyber
659A	02/17	Security Measure
660	12/15	Official-Sensitive Security Requirements
670	02/17	Tax Compliance
691	03/15	Timber and Wood –Delivered products
694	07/18	Accounting for Property of the Authority
697	07/13	Contractors on Deployed Operations - CONDO
800	12/14	Qualifying Defence Contract
801	12/14	Amendments to Qualifying Defence Contracts – Consolidated Versions
802	12/14	QDC: Open Book on sub-contracts that are not Qualifying Sub-Contracts (QSC)
804	03/15	QDC: Confidentiality of Single Source Contract Regulations Information

### Intellectual Property Rights

DEFCON	Edition	Description
14	11/05	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs
15	02/98	Design Rights and Rights to use Design Information
16	10/04	Repair & Maintenance Information
90	11/06	Copyright
632	08/12	Third Party Intellectual Property – Rights and Restrictions
703	08/13	Intellectual Property Rights – Vesting in the Authority

### Defstan & Quality Assurance Standards and Conditions

Standard	Description
ISO 9001:2015	Quality Management System
DEFSTAN 05-135 Issue 1	Avoidance of Counterfeit Material
DEFSTAN 02-884 Issue 2	Submarine Enterprise Standard Quality Requirements
DEFSTAN 05-61 Part 9 Issue 5	Independent Inspection Requirements for Safety Critical Items
SSP 25 Issue 3 Amdt 1	Quality Assurance for Safety in Submarines
AQAP 2110 Edn D Version 1	Nato Quality Assurance Requirements for Design, Development & Production
AQAP 2105 Edn C Version 1	Nato Requirements for Deliverable Quality Plans
DEFSTAN 05-057 Issue 7	Configuration Management of Defence Materiel
DEFSTAN 05-061 Part 1 Issue 6	Concessions



DEFSTAN 05-061 Part 4 Issue 3 & Amdt 1	Contractor Working Parties
DEFSTAN 00-45 Parts 1& 2 Issue3, Part 3 Issue 2	Reliability Centered Maintenance
DEFSTAN 81-41 Issue 8	Packaging of Defence Materiel
DEFSTAN 81-130/1 Issue 4	The Transportation, Handling, Storage, Packaging of Magnetically Sensitive Equipment
DEFSTAN 05-129	Contractors on Deployed Operations

**Defence Forms**

DEFFORM	Edition	Description
47ST	02/17	Single Source Invitation to Tender
68	12/16	Hazardous Articles, Materials or Substances Statement by the Contractor
94	11/06	Confidentiality Agreement
111	18/11/16	Appendix – Addresses and other Information
129J	18/11/16	The Use of the Electronic Business Delivery Form
177	03/80	Design Rights and Patents (Sub-Contractors agreement)
315	02/98	Contract Data Requirements
316	05/98	Government Furnished Information
528	05/17	Import and Export Controls
532	05/18	Personal Data Particulars
539a	08/13	Tenderer's Commercially Sensitive Information Form

## Part B. Special Conditions

### CORE CLAUSES

#### 1. Definitions and Interpretations

- 1.1. In addition to the provisions of DEFCON 501 (Definitions and Interpretations), the following words and expressions shall apply to this Contract:

<b>Applicable Law</b>	Any applicable law, common law, legislation, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court or delegated or subordinate legislation, and any applicable official request or requirement with which the relevant Party is bound to or is accustomed to comply.
<b>Actively</b>	Characterised by a proactive approach with the ability to progress a task without the need for constant Authority direction but still recognizing the required Contract related approvals, checks and stops, determined by the Authority acting reasonably.
<b>Authority</b>	Without prejudice to the meaning set out in Defcon 501 means any Ministry staff acting in relation to the delivery of the Contract.
<b>Authority Disclosed Data</b>	"Authority Disclosed Data" means information relating to the Authority, the Contractor or the Contractor Deliverables disclosed to the Contractor or a Contractor related party including: (a) the Contract Notice; (b) the Pre-Qualification Questionnaire; (c) information, data and documents disclosed during the tendering process; and (d) the Clarification Responses.
<b>Authority Related Party</b>	An officer, employee, Representative of the Authority, agent, adviser or contractor of the Authority or member of the UK armed forces (in each case acting in such capacity), other than the Contractor and Contractor Related Parties.
<b>Articles</b>	All Goods, articles, equipment and spares (excluding services) which the Contractor is required to supply pursuant to this Contract.
<b>Background Information</b>	Any Information not generated in the performance of this Contract.

<b>Business Day</b>	Any day excluding Saturdays, Sundays and public and statutory holidays in England and Wales.
<b>Calendar Month</b>	The first calendar day to the last calendar day of the month
<b>Clarification Responses</b>	Answers, updates and other clarifications provided by the Authority to the Contractor during the tendering process.
<b>Commencement Date</b>	The date of inception of the Contract by the Contractor signing a Form 10 and returning it to the Authority as an acceptance of offer.
<b>Contractor</b>	The person who undertakes to supply the Articles, or perform the Service, or both for the Authority as is provided by the Contract. 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's Representative(s)</b>	The Contractor's employees, agents and subcontractors.
<b>Contractor Related Party</b>	means one or more of: (a) an officer, employee, representative, agent or adviser of the Contractor; (b) a member of the Contractor's Group; (c) a Sub-contractor and any further sub-contractor of any tier; and (d) an officer, employee, representative, agent or adviser of a Sub-contractor.
<b>Control Copy</b>	As set out in Clause 31.4
<b>Controlled Information</b>	Any information which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is stated to be 'Controlled Information'.
<b>Contracting, Purchasing &amp; Finance (CP&amp;F)</b>	The Authority's Contracting, Purchasing & Finance electronic procurement system.
<b>Contract Year</b>	365 days commencing on the Contract Commencement Date and repeating until the Contract expiration.
<b>Defence Conditions</b>	The conditions listed in Part A.
<b>Demand</b>	A request for goods or services raised by an organization that is identified for this purpose by having a Unit Identity Number (UIN)
<b>EU Public Procurement Regime</b>	The Defence and Security Public Contracts Regulations 2011 or the Public Contracts Regulations 2015 as appropriate and as amended from time to time.

<b>EU Treaties</b>	The Treaty on the establishment of the European Union and the Treaty on the Functioning of the European Union as amended from time to time.
<b>Exit Plan</b>	The Exit Plan at Annex I.
<b>Expiry Date</b>	The date which is Three (3) years after the Commencement Date unless and to the extent that the Contract is extended in accordance with Condition 2.1 .to a maximum of two (2) years
<b>Firm Price</b>	A price agreed for the Articles delivered under Activity 2 (Supply Support (Spares)) and Activity 3 (Repair Support (Spares)) which is not subject to variation.
<b>Firm Rates</b>	A rate agreed for the Services delivered under Activity 4 (Post Design and Technical Services) which is not subject to variation.
<b>New Item</b>	The first instance of the Authority placing a demand for Contractor Deliverables which were not priced prior to the Commencement Date.
<b>First Level Articles</b>	Submarine Articles the failure of which will lead to loss of a submarine and/or potentially the release of fission products where designated as such by the Authority.
<b>Foreground Information</b>	Any Information which is generated in performance of this Contract.
<b>Good Industry Practice</b>	The exercise of such degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person seeking to comply with his contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply to or to be expected from that person, complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the Contractor or any sub-contractor.
<b>Government Furnished Equipment</b>	Any Issued Property provided to the Contractor in accordance with DEFCON 611.
<b>Government Furnished Information</b>	Any issued property provided to the Contractor in accordance with Defcon 611
<b>Government Quality Assurance Representative</b>	An individual, or organisation, approved and registered by the MOD Quality Assurance Authority (QAA) to undertake tasked Government Quality Assurance surveillance on contracts/subcontracts placed in the UK.

<b>Information</b>	Any information scientific, technical or otherwise irrespective of the manner in which it is presented including in the form of software and whether or not it is protected or capable of protection as Intellectual Property.
<b>Intellectual Property</b>	Patents, utility models, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database and topography rights; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.
<b>Item</b>	A component, part, consumable, assembly or equipment that is a constituent part of an Article.
<b>Lead Time</b>	The period between placement of an order and delivery of an Article.
<b>Key Performance Indicator</b>	The measure of performance as published in the Contract Terms and Conditions
<b>New Provider</b>	A third party or parties contracted (or to be contracted) by the Authority to carry out services and/or works similar to the Contractor Deliverables after Contract Expiry Date or termination.
<b>Overhaul</b>	To carry out limited work on an item to return it to a condition where it will fulfil specified functional requirements
<b>Option Year</b>	The period of time outside of the Contract Term by which the Authority can use to extend the Contract
<b>Party</b>	The Authority or the Contractor.
<b>Quality Plan</b>	A plan which meets the requirements of AQAP 2105 and is in accordance with paragraph 4.5 relating to Activity 1 of Annex A (SOSR).
<b>Repair</b>	An Article achieves a serviceable sentence by: (i) the replacement of non-serviceable / defective articles, (ii) artisan methods of renewal (iii) craftsmanship production / reproduction or (iv) specialized skills
<b>Repair Price</b>	A one-off Firm Price for repair of a specific Article
<b>Repair Purchase Order (RPO)</b>	An Authority-generated demand for a Strip, Survey & Repair (SS&R) of Articles raised through CP&F.
<b>Repair Turnaround Time</b>	The Lead Time for repair of a specific Article commencing upon receipt by the Contractor of an RPO for the SS&R of the Article and ending on the date upon which the

	Contractor delivers the Article(s) Ex-Works (EXW) in accordance with DEFCON 507.
<b>Ships Staff</b>	Royal Navy personnel assigned and/or embarked on a Royal Navy surface or submarine vessel.
<b>Standards</b>	Defence Standards set out processes and procedures that could be injurious to health if adequate precautions are not taken. Adherence to those processes and procedures in no way absolves users from complying with legal requirements relating to Health and Safety at Work. This standard has been devised solely for the use of the MOD and its contractors in the execution of contracts for the MOD.
<b>Standard Purchase Order (SPO)</b>	An Authority-generated demand for supply of Articles raised through CP&F.
<b>Strip &amp; Survey</b>	The activity of the Contractor stripping down, inspecting and examining an Article to determine the existence and extent of damage and/or degradation to the Article.
<b>Stripped, Surveyed &amp; Repaired (SS&amp;R)</b>	The activity of the Contractor carrying out a Strip & Survey of an Article followed by the subsequent repair of the Article.
<b>Subcontractor</b>	Any subcontractor to the Contractor, a subcontractor of a subcontractor to the Contractor and any other subcontractor of whatever tier engaged by the Contractor to provide the Contractor deliverables or any part of the Contractor deliverables
<b>TAF Approval</b>	The Authority's approval of a TAF Response by the completion of all sections of Part C of Annex J (TAF).
<b>TAF Proposal</b>	The generation of a specific requirement by the Authority through the completion of Part A of Annex J(TAF).
<b>TAF Response</b>	The Contractor's proposed solution, including price, for meeting a TAF Proposal by the completion of Part B of Annex J (TAF).
<b>Task</b>	A request from the Authority for Contractor Deliverables to be provided by the Contractor in relation to Activity 4, placed using a Task Approval Form (TAF)
<b>Task Approval Form</b>	The form at Annex J used by the Authority to request Contractor Deliverables under this Contract.
<b>Term</b>	As set out in Condition 2 (Contract Term).
<b>Warranty Period</b>	The period of time for which the Contractor's warranty provisions apply to a given Article as set out in Condition 38.

**Abbreviations**

<b>AQAP</b>	Allied Quality Assurance Publications
<b>BER</b>	Beyond Economic Repair
<b>CE</b>	Conformité Européene (European Conformity)
<b>COC</b>	Certificate Of Conformity
<b>CONDO</b>	Contractors on Deployed Operations
<b>CP&amp;F</b>	Contracting, Purchasing & Finance
<b>DEFCON</b>	Defence Condition
<b>DEFFORM</b>	Defence Form
<b>DEFSTAN</b>	Defence Standard
<b>DSPCR</b>	Defence and Security Public Contracts Regulations
<b>Edn</b>	Edition
<b>EU</b>	European Union
<b>GFE</b>	Government Furnished Equipment
<b>GQAR</b>	Government Quality Assurance Representative
<b>IEC</b>	International Electrotechnical Commission
<b>IP</b>	Intellectual Property
<b>IPR</b>	Intellectual Property Rights
<b>ISO</b>	International Organization for Standardization
<b>ITN</b>	Invitation To Negotiate
<b>KPI</b>	Key Performance Indicator
<b>LRU</b>	Line-Replaceable Unit
<b>MOD</b>	UK Ministry Of Defence
<b>NATO</b>	North Atlantic Treaty Organisation
<b>NSC</b>	NATO Supply Code
<b>NSN</b>	NATO Stock Number
<b>OEM</b>	Original Equipment Manufacturer
<b>OMP</b>	Obsolescence Management Plan
<b>ONS</b>	Office for National Statistics
<b>OSD</b>	Out of Service Date
<b>PCR</b>	Public Contracts Regulations

<b>PHS&amp;T</b>	Packaging, Handling, Storage and Transportation
<b>PI</b>	Performance Indicator
<b>PDS</b>	Post Design Services
<b>QA</b>	Quality Assurance
<b>QMS</b>	Quality Management System
<b>QPI</b>	Quality Performance Indicators
<b>S&amp;S</b>	Strip & Survey
<b>SME</b>	Subject Matter Expert
<b>SOQR</b>	Statement of Quality Requirements
<b>SOSR</b>	Statement Of Support Requirements
<b>SPOC</b>	Single Points Of Contact
<b>SQEP</b>	Suitably Qualified and Experienced Personnel
<b>SS&amp;R</b>	Strip, Survey & Repair
<b>TAF</b>	Task Approval Form

- 1.2. In this Contract, references to Defence Forms (DEFFORMs) shall mean the latest version of that document available.

**2. Contract Term**

- 2.1. Subject to the provisions of any right of early termination of this Contract, the term of this Contract shall commence on the Date of Acceptance of Offer of Contract and shall expire on the Expiry Date as detailed in “Definitions and Interpretations above.

**3. Precedence of Documents**

- 3.1. If there is a conflict or inconsistency between any of the terms in the main body of this Contract and the Annexes or between any of the Annexes, the following order of precedence shall apply to resolve that conflict:
- 3.1.1. The Special Conditions;
  - 3.1.2. The Defence Conditions;
  - 3.1.3. Annex A (Statement of Support Requirements);
  - 3.1.4. Annex E (Performance Management Record);
  - 3.1.5. All other Annexes.



- 3.2. If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 3.1 above, such Party shall promptly notify the other and the Parties will seek to resolve such inconsistency, provided that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with DEFCON 530 (Dispute Resolution).
- 3.3. The Contractor shall not seek to limit its obligations or liability under this Contract by imposing, incorporating or relying on its (or its sub-tier suppliers) conditions of sale whether or not such conditions may be printed on or included in documentation (including order acknowledgements and in comments fields) provided to the Authority and shall indemnify the Authority for any and all costs, claims, liabilities, demands arising from such conditions of sale.

**4. Formal Amendments to the Contract**

- 4.1. In addition to the provisions of DEFCON 503 (Formal Amendments to Contract) and DEFCON 620 (Contract Change Control Procedure), nothing said, done or written by any person, nor anything omitted to be said, done or written by any person, (including any employee or servant of the Authority) shall in any way:

- 4.1.1. affect the rights of the Authority; or
- 4.1.2. modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract; or
- 4.1.3. be deemed to be a waiver of rights of the Authority

unless made in writing and signed by the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract) as the duly Authorised Representative of the Authority.

- 4.2. The Authority shall have no liability for any work undertaken by the Contractor which is the subject to an amendment, prior to the conclusion of any amendment in accordance with DEFCON 503 and DEFCON 620.

**PARTIES RIGHTS AND OBLIGATIONS**

**5. Obligations of the Authority**

- 5.1. The Authority shall comply with all Applicable Laws in the performance of its obligations under this Contract.
- 5.2. The Authority gives no guarantee as to the amount of work to be provided, or the value of orders, taskings, demands or otherwise and TAFs to be placed under the Contract nor is it obliged to provide the Contractor with any orders, taskings or demands.

**6. Obligations of the Contractor**

- 6.1. The Contractor shall provide the Contractor Deliverables to the Authority in accordance with:

- 6.1.1. all applicable standards in Part A General Conditions; and
- 6.1.2. the Statement of Support Requirements (SoSR) at Annex A to this document; and
- 6.1.3. Annex B1 – Price Schedule
- 6.1.4. any associated order or Task Authorisation Form (TAF) which shall be in the format in Annex H.

**7. Standards of Performance**

- 7.1. The Contractor shall (and the Contractor Related Parties shall) provide the Contractor Deliverables in compliance with:
  - 7.1.1. all applicable Laws;
  - 7.1.2. Good Industry Practice;
  - 7.1.3. any applicable Standards set out in the relevant order or Task Authorisation Form (TAF).

**8. Contractor Related Parties**

- 8.1. The Contractor shall at all times remain directly liable to the Authority for the due and proper performance of its obligations under this Contract and shall be responsible and liable for the acts and omissions of the Contractor Related Parties in relation to this Contract and the Services as if they were the acts and omissions of the Contractor.
- 8.2. Without limitation in respect of its actual knowledge, the Contractor shall for all purposes of this Contract be deemed to have such knowledge in respect of the Contractor Deliverables and other obligations under this Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

**9. Authority Related Parties**

- 9.1. Subject to the provisions of this Contract, the Authority shall be responsible and liable for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

**10. Authority Disclosed Data**

- 10.1. Subject to Condition 13 (Fraudulent Statements):
  - 10.1.1. the Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data; and

- 10.1.2. neither the Authority nor any Authority Related Party shall be liable to the Contractor in contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:
- (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or
  - (ii) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contract or the competition.

**11. Contractor's Due Diligence**

- 11.1. On entering into this Contract, the Contractor agrees it has been given an opportunity to carry out a review and investigation of the documents provided during the tendering process and the Clarification Responses, and shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) as a consequence of:
- 11.1.1. any information not being provided in the tendering process or the Clarification Responses where such information is not material;
  - 11.1.2. any fact or circumstance that has been fairly disclosed during the tendering process or the Clarification Responses;
  - 11.1.3. any fact or circumstance which the Contractor, or its agents or advisers were, or ought reasonably to have been, aware of as a result of the tendering process or the Clarification Responses; or
  - 11.1.4. any fact or circumstance which a Tenderer, acting in accordance with Good Industry Practice, would have been aware of having made reasonable due diligence enquiries.

**12. No Relief**

- 12.1. Subject to Condition 13 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) on the basis that it has relied upon any information, whether obtained from the Authority, Authority Related Party or other third party.

**13. Fraudulent Statements**

- 13.1. Nothing in this Contract shall exclude any liability which the Authority would otherwise have to the Contractor for statements made fraudulently or fraudulent omissions to make statements prior to the date of this Contract.

**14. Progress Reporting**

- 14.1. The Contractor shall provide progress reports in accordance with DEFCON 604 on a quarterly basis, as reasonably required by the Authority or as stated within the Statement of Support Requirements at

Annex A, to establish the nature and the progress of the supply of Articles and /or Services being provided under the Contract and any order(s).

**15. Quality Assurance**

- 15.1. The Contractor shall comply with the Quality Assurance Standards and Conditions and the quality management requirements detailed in Activity 1 of Annex A (SOSR).
- 15.2. The Contractor shall provide to the Authority within six (6) weeks of the Commencement Date a finalised Quality Plan.

**16. Safety Management**

- 16.1. The Contractor shall notify the Authority immediately upon becoming aware of any safety issues in relation to the Articles (including arisings from proposed modifications/new design) and the Contractor shall also:
  - 16.2. set out the measures taken by the Contractor or planned to be taken to limit or resolve such safety issues; and
  - 16.3. attend any meeting regarding such safety issues requested by the Authority; and
  - 16.4. provide such supporting evidence as reasonably required by the Authority in order that a safety assessment/safety case can be conducted.

**17. Obsolescence**

- 17.1. The Contractor shall apply the processes and procedures of IEC 62402:2007 using the form at Annex C to notify the Authority in writing immediately upon becoming aware of any actual or potential obsolescence issues affecting the Articles.
- 17.2. The Contractor shall provide sufficient detail to enable the Authority to understand the issue and formulate a strategy for dealing with the issue, which shall include a description of:
  - 17.2.1 the obsolescence issue;
  - 17.2.2 the cause of the obsolescence issue; and
  - 17.2.3 a suggested mitigation strategy to support future support and operational needs (including any investigative work required).

**18. Environmental Management**

- 18.1 The Contractor shall ensure that all activities performed under the Contract shall comply with certified environmental management standards based on ISO 14001 or equivalent.

## **19. CE Marking**

- 19.1 The Contractor shall comply with the CE Marking European Union (EU) Directives and where Articles comply with the CE Marking EU Directives the Contractor shall either mark the Articles with the appropriate CE marking or identify on appropriate delivery paperwork. Where the Article is exempt from the CE Marking EU Directives the Contractor shall notify the Authority in writing prior to delivery.

## **TASKING, PRICING AND PERFORMANCE**

### **20. Tasking Process**

- 20.1 Ad hoc engineering support may be initiated by the Authority in accordance with Activity 6 of the Statement of Support Requirement at Annex A.
- 20.2 The Contractor shall submit its response to a TAF Proposal by completing a TAF Response using the agreed rates set out in Annex B1. There shall be no additional cost incurred by the Authority for the Contractor to raise a TAF Response or respond to any queries.
- 20.3 The Authority may (at its discretion) either reject the response, raise a query or accept the TAF Response by submitting a signed TAF Approval. The Contractor shall not commence the ad hoc engineering support until the Authority has raised and issued to the Contractor a Standard Purchase Order.
- 20.4 The Contractor shall not Commence the Ad hoc engineering support until the Authority has raised and issued to the contract a Standard Purchase order.

## **21 Price**

- 21.1 Prices for Contractor Deliverables shall be as follows;
- 21.1.1 Activity One (Service Management) is included in the rates and prices for Activities Two to Four
- 21.1.2 Activity Two (Supply Support (Spares) is as set out at Annex B1 and shall be Firm Prices for years 1 to 3 of the Contract and Fixed Prices for the remainder of the Term;
- 21.1.3 Activity Three (Equipment Upkeep Management) is as set out at Annex B1 and shall be Firm Prices for years 1 to 3 of the Contract and Fixed Prices for the remainder of the Term
- 21.1.5 Activity Four (Technical Service Support and Post Design Services) shall be calculated using the rates set out at Annex B1 and in accordance with the process set out in Condition 24. The prices shall be Firm for years 1 to 3 of the Contract and shall be provided by the Contractor to the Authority in accordance with the timescales set out in Condition 24.

- 21.2 The Firm Price for each Strip, Survey & Repair as agreed in Annex B1 shall be the complete price payable by the Authority for all work required to affect the repair, irrespective of the condition/completeness of the Article when received by the Contractor.
- 21.3 In order to provide Firm Prices (excluding VAT) for New Items in Annex B1 upon a Request for Quote (RFQ) from the Authority, the Contractor shall within fifteen (15) Business Days:
- 21.3.1 Provide the Authority with a minimum of three (3) quotations for each New Item, which have been obtained through a competitive process and which are valid for the remainder of the Term;
- 21.3.2 Confirm to the Authority the maximum Lead Times for each New Item provided in a quotation provided pursuant to Clause 21.3.1.
- 21.3.3 Warrant to the Authority that it has obtained quotations which meet the requirement and offer best value for money to the Authority.
- 21.3.4 If the Contractor is unable to obtain three (3) quotations in accordance with Clause 21.3.1, it shall notify the Authority and seek further instructions on the basis of the quotations it has received. The Contractor shall provide evidence of price negotiations undertaken in respect of any Articles which can only be obtained from a single source.
- 21.4 The Authority may place an order with the Contractor for any of the New Items based on any of the quotations supplied in accordance with Condition 21.
- 21.5 At its discretion, the Authority may audit the quotations obtained or the process followed by the Contractor to obtain quotations supplied in accordance with Condition 21.
- 21.6 The Parties shall amend Annex B1 (Price list) to reflect the Authority's preferred quotation (which may or may not be the quotation used for the New Items obtained in accordance with Condition 21 which shall apply to future orders for the remainder of the Term.

## **22 Option Period and Prices**

- 22.1 The prices detailed in the Schedule of Prices at Annex B1 and the underlying pricing assumptions and mechanisms shall be extended to cover the option period from Year 4 and Year 5.
- 22.2 In addition to the prices for the period of Year 1 to Year 3 as detailed in the Schedule of Prices at Annex B1 and the agreed pricing mechanisms, the Contractor hereby grants to the Authority the irrevocable option to extend the Contract for a further one plus one option years in accordance with the Terms and Conditions set out in this Contract. It is agreed that the Authority has no obligation to exercise such option, but should it wish to the Authority will confirm with the Contractor no later than end of Year 3. In respect of years 4 & 5 the prices shall be calculated utilising the published baseline profit rate applicable at the time of the Amendment.

## 23 Variation of Fixed Prices

### Activities 2 and 3

23.1 If the Authority takes up the option to extend the Contract, (years 4 & 5 of the Contract), the prices for Activities 2 and 3 are Fixed Prices which shall be varied using the following variation of price formula:

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

Where:

- V represents the variation of price.
- P represents the Year 3 Firm Price as stated in Annex B1.
- O represents the index K38E Repair and installation services of machinery and equipment (SIC 2007) Output.
- O<sub>0</sub> represents the monthly average of index K38E Repair and installation services of machinery and equipment (SIC 2007) Output for the base period of Year 1 pricing.
- O<sub>i</sub> represents the monthly average of index K38E Repair and installation services of machinery and equipment (SIC 2007) Output across the financial year prior to the period for which variation is being added.
- a represents the Non-Variable Element (NVE) which shall be 10%.
- b represents the Variable Element which shall be 90%.
- a + b = 1

23.2 For the purposes of this Contract a variation modifier can be derived by completing the operation (O<sub>i</sub> / O<sub>0</sub>).

This variation modifier shall then be applied to each Firm Price in Annex B1 hereto to calculate Article and Strip & Survey prices should the Authority take up the option period for years 4 and 5 of the Contract.

23.3 The Index referred to in Clauses 23.1 above shall be taken from the following Table: Output Producer Price Indices - K38E Repair and installation services of machinery and equipment (SIC 2007) Output.

23.4 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last three (3) years are not valid for Variation of Price clauses 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.

23.5 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.

- 23.6 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 ONS used for rebasing indices shall then be applied.
- 23.7 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.
- 23.8 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.
- 23.9 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.

#### **24 Activity 4 Pricing**

- 24.1 The Rates recorded at Annex B1 are Firm Rates for Years 1 to 3. If the Authority takes up the option to extend the Contract, (years 4 & 5 of the Contract), the prices for Activity 4 are Fixed Prices which shall be varied using the variation of price formula at Condition 23. (Variation of Price). The index which will be used is K8ZU – Top Level Service Provider Price Index (SPPI).

#### **25 Performance Mechanism**

- 25.1 The Contractor is offered a mechanism that varies the Firm Prices that can be attained under Activities 2 and 3 of the Contract in accordance with the level of performance achieved against the contractually agreed Key Performance Indicators (KPIs) at Annex E.
- 25.2 Under this mechanism the following process shall be used:

25.2.1 The Contractor will record, using the Performance & Financial Report (P&FR) at Annex D2, all Purchase Order lines/Repair Purchase Order lines that are due for delivery against Activity 2 (Supply Support) and Activity 3 (Equipment Upkeep Management) of Annex A in each



calendar month. These records shall be monitored by the Contractor and submitted via email to the Authority's Commercial representative as defined in DEFFORM 111, as part of the monthly Performance & Financial Report no later than the 5th Business Day of each calendar month for review by the Authority.

25.2.2 On the first Business Day of each calendar month the Contractor shall further identify and separately record all the orders for Capital Spares and Consumable Spares under Activity 2 and Activity 3 which were due for delivery during the preceding calendar month and shall calculate the percentage of that population of Items which were delivered on time in full. The Contractor shall provide this percentage and the population upon which it was calculated to the Authority Commercial representative as defined in DEFFORM 111 no later than the 5th Business Day of each calendar month for review and agreement by the Authority. These calculations will be used in review meetings and for the Authority to understand the current supply positions under each Activity.

25.2.3 On the last Business Day of each 3 (three) calendar month period "Performance Management Quarter" (PMQ) the Contractor shall calculate the KPI's for each Activity as detailed in the SOSR Annex A to this Contract for the preceding quarter. The final calculation shall be based upon the figures for the whole PMQ period to identify both SPO and RPO lines which should be delivered OTIF in accordance with KPIs 3 and 6 in Activity 2 and 3 respectively. The Contractor shall calculate the percentage of that population of Items which were delivered on time in full and shall report this percentage and the population upon which it was calculated to the Authority no later than the 5th Business Day of each calendar month for review and agreement by the Authority. The agreed percentage per KPI shall then be fixed as either a RED, AMBER or GREEN performance for each PMQ.

25.2.4 For KPIs 4 and 5 in Activities 2 and 3 respectively, the Contractor shall calculate the KPIs as detailed in the SOSR Annex A to this Contract. On the first Business Day of each calendar month the Contractor shall further identify and separately record all the orders received under Activity 2 and Activity 3 during the preceding calendar month and shall calculate the percentage of that population which were acknowledged within 4 hours. The Contractor shall provide this percentage and the population upon which it was calculated to the Authority's Commercial representative as defined in DEFFORM 111 no later than the 5th Business Day of each calendar month for review and agreement by the Authority. These calculations will be used in review meetings and for the Authority to understand the current supply positions under each Activity.

25.2.5 On the last Business Day of each 3 (three) calendar month period "Performance Management Quarter" (PMQ) the Contractor shall calculate the KPI's for each Activity as detailed in the SOSR Annex A to this contract for the preceding quarter. The final calculation shall be based upon the figures for the whole PMQ period to identify both SPO and RPO lines which have been acknowledged within 4 (four) hours in accordance with KPIs 4 and 5 in Activities 2 and 3 respectively. The Contractor shall calculate the percentage of that population

of orders which were acknowledged by the Contractor and shall report this percentage and the population upon which it was calculated to the Authority no later than the 5th Business Day of each calendar month for review and agreement by the Authority. The agreed percentage per KPI shall then be fixed as either a RED, AMBER or GREEN performance for each PMQ.

25.2.6 With regards to the KPIs for Activity 4 Post Design and Technical Services, KPIs 7, 8, 9 and 10 shall be calculated in accordance with the SOSR, Annex A to this contract and be reported at the same frequencies and in the same manner as Activities 2 and 3.

25.2.7 Should the KPI report associated with Activities 2 and 3 have a RED performance status for each PMQ a recovery plan must be included within the monthly report provided by the 5<sup>th</sup> Business Day of the following calendar month. The plan shall define the steps and processes which the Contractor intends to undertake to rectify its performance issues, which will be subject to the Authorities approval.

25.2.8 All recovery plans as detailed in 26.2.7 above shall include as a minimum:

- i. Full description of the delay and reasons for its occurrence;
- ii. Any resultant impacts on future deliveries;
- iii. Actions to be taken - including identifying the owner;
- iv. Proposed Recovery schedule;
- v. Full review on recovery plan effectiveness at the next planned Project Review or Annual Strategic Review whichever is the sooner.

25.2.7 For the purposes of this Contract non-performance of an approved recovery plan may be deemed to be continuous poor performance and may constitute, at the Authorities sole discretion, a material breach of the Contract. The Authority shall, without limiting any of its other rights and remedies, be entitled to exercise at its sole discretion its right to terminate in accordance with DEFCON 514.

25.2.7 The Contractor will initially be paid at the Green performance level of the Firm Price agreed at Annex B1. Should the Contractor achieve an Amber or Red performance level across each PMQ the Authority will reclaim the appropriate overpayment each quarter following agreement of the PMQ reports.

25.2.8 For the avoidance of doubt, and as **AN EXAMPLE ONLY**, the Authority will assume a Firm Price of £100 in Annex C equates to 100% of the price payable under this contract. The Contractor will be paid at the rate against each line item which will equate to £100 (100%) upon delivery of goods in full. Subject to performance and following confirmation by the Authority that the Contractor has met the AMBER performance level at the end of the PMQ the Authority

will reclaim the AMBER performance fee of £5 (5%). Should the Contractor achieve the RED performance level at the end of the PMQ the Authority will reclaim the RED performance fee of £10 (10%) of the Firm Price in Annex B1. In accordance with 26.5 and 26.6 below, where there are multiple items on a Standard Purchase Order line /repair Purchase Order line, each line will be considered to have been performed at the RED rate if any of the line items are delivered later than the corresponding agreed lead time in Annex B1

## **26. KEY PERFORMANCE INDICATORS**

- 26.1 KPI reports are reviewed at the Project Review and Annual Strategic Review Meetings as detailed in this Annex D2 during the first 3 years of the contract. The Authority will at its discretion consider the Contractors performance thereafter and will propose the amendment of the existing or the introduction of any additional KPI's to ensure constant improvement. The amendment of any KPI's will only occur once in each calendar year.
- 26.2 The Contractor will be required to provide Financial Management Information to the Authority as detailed in Annex A of DEFCON 647 in the format at Annex B of DEFCON 647 to support this contract monthly and this will be monitored annually.

### **PERFORMANCE LEVELS**

- 26.5 All Purchase Order lines/repair Purchase Order lines, and their associated quantities, issued by the Authority in respect of Activities 2 and 3 shall be delivered 'On Time in Full' (OTIF) in accordance with the contractual lead times stated in Annex B1. If the Contractor chooses to split delivery of a Purchase Order line/repair Purchase Order line then it shall be deemed OTIF if all part deliveries meet the contractual lead time. If delivery of a Purchase Order line/repair Purchase Order line is partially late then the entire purchase order will be deemed late.
- 26.6 The percentage of Purchase Order lines/repair Purchase Order lines due in month that have been delivered OTIF shall determine whether the Contractor has met a Red or Green level of performance as detailed a

## **27. PAYMENT**

- 27.1 Claims for payment in respect of work carried out under each Activity shall be invoiced by the Contractor in accordance with DEFCON 522 and made via the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

### **Activity 2**

- 27.2 Claims for payment in respect of work carried out under Activity 2 shall be made in accordance with 27.1 above upon satisfactory completion of all work under each Order and following the Article being brought on charge at MOD Store. Payment claims shall be submitted by the Contractor and payments will be authorised by the Authority and made via CP&F.

**Activity 3**

- 27.3 Claims for payment in respect of work carried out under Activity 3 shall be made in accordance with 27.1 above upon satisfactory completion of all work under each Repair Order line and following the Article being brought on charge at MOD Store. For items found to be BER, payment will be made following receipt of the Strip and Survey Report by the Authority and in accordance with condition 27.1 above. Payment claims shall be invoiced by the Contractor and payments authorised by the Authority and made via CP&F.

**Activity 4**

- 27.4 Claims for payment in respect of work carried out under Activity 4 relating to TAFs shall be made utilising the firm labour rates and travel & subsistence rates shown in Annex B1, following completion of all work to the Authority's satisfaction and submission of a completed TAF PART D (Task Completion) to the Authority. Payment claims shall be submitted by the Contractor and payments authorised by the Authority and made via CP&F.
- 27.5 In order that the financial aspects of the Contract are managed effectively, it is essential that claims for payment are rendered promptly.

**PAYMENT ON EXPIRY OR TERMINATION**

- 27.6 The Contractor shall submit all final bills and invoices within six months of the Expiry Date or as otherwise agreed.
- 27.7 Final payments of Activity 2 and 3 obligations shall be paid in accordance with Clauses 27.1 - 27.3 above subject to DEFCON 524 (Rejection) and DEFCON 525 (Acceptance). Payment for Activity 4 post design and Technical services taking place after Contract expiry pursuant to Condition 2 (Contract Term) shall be paid upon completion of the agreed TAF.

**FINANCIAL INSPECTION AND REVIEW**

**28. Rights of Audit**

- 28.1. The Contractor shall grant the Authority's nominated representative(s) or agent(s) reasonable access to the Contractor's systems and records relating to the Contract from the Contract Commencement Date. Contract Records shall be kept for a period of six years after completion of the Contract.
- 28.2. The Contractor shall keep full and accurate records (including, without limitation, financial documents including Supplier quotations/tenders evidencing expenditure and income) with respect to the Contract.
- 28.3. The Contractor shall grant the Authority and its authorised representative(s) or agent(s) the right of access at all reasonable times to visit the Contractor's premises and to inspect and/or take copies from the records, relating to the Contract, and the Contractor shall provide all reasonable assistance at all times during the currency of the Contract, and for six years after completion of all work there under, for the purposes of allowing the Authority and/or its authorised representative(s) or agent(s) to obtain such information as is necessary to:

- 28.3.1. fulfil the Authority's obligations to supply information in relation to Parliamentary, Governmental, judicial or other administrative purposes; or
  - 28.3.2. carry out an audit of the Contractor's compliance with the obligations set out in the Contract including, without limitation, the Contractor's obligations with respect to the meeting of performance and quality standards, the security and confidentiality of data, computer integrity and other security requirements; or
  - 28.3.3. investigate suspected fraud or other impropriety by the Contractor, the Ministry of Defence and/or any third party in relation to the Contract, in which case the provisions of this Clause shall be to the powers of the law enforcement authorities granted by law; or
  - 28.3.4. verify the accuracy of and appropriate application of charges and prices and any proposed or actual variations to the charges and prices in accordance with the Contract.
- 28.4. Subject to DEFCON 531 (Disclosure of Information) the Authority and its authorised representatives and/or agents shall treat as confidential all data and records accessed during any audit carried out pursuant to this Clause.
- 28.5. The Authority shall give a minimum of five (5) Business Days' notice of the exercise of its audit rights under this Clause, except:
- 28.5.1. where overriding Government circumstances dictate (e.g. Ministerial /Parliamentary requirements); or
  - 28.5.2. in the circumstances set out in Clause 28.3.3, in which case the Authority will be entitled to conduct an audit without notice; and
  - 28.5.3. that there shall be a standing right for the Authority or its agent(s) to carry out a spot check audit in conjunction with progress meetings held at the Contractor's premises

**29. Open Book Accounting**

- 29.1. The Contractor agrees to open book accounting whereby the Authority shall be provided with any information or documentation used by the Contractor that the Authority requires to evaluate the Contractor's pricing activities under the Contract.
- 29.2. The Authority reserves the right to request information and documentation that relates to the Contractor's pricing activities, including the cost models, under the Contract and on the receipt of such a request the Contractor shall provide the Authority with such information or documentation within five (5) Business Days.

**INTELLECTUAL PROPERTY, INFORMATION AND GOVERNANCE**

**30. Intellectual Property Rights (IPR)**

**Security of Supply**

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- 30.1. In addition to the Intellectual Property Rights Conditions included within the General Conditions of Contract, the following shall also apply.
- 30.2. In the event that:
- 30.2.1. the Authority decides to place a follow on contract with the Contractor for the continuing provision of the Contractor Deliverables which are the same as or similar to those provided under this Contract and the Contractor is unwilling or unable to accept, on fair and reasonable terms a follow on contract from the Authority; and/or
  - 30.2.2. the Contractor permanently discontinues its business for whatever reason and such business is not continued by a successor in interest to the Contractor to whom the relevant intellectual property rights have been transferred then the Authority shall have the right to obtain from the Contractor, or from the authorised trustees or receivers acting on behalf of the Contractor, sufficient data, code, information and license(s) required for the provision of the Contractor Deliverables as those provided under this Contract or such similar deliverables, articles or services. Such data, code, information and license(s) may be used royalty-free by the Authority or new provider to provide deliverables, articles or services similar to those provided under the Contract.

#### **Private Venture Funding**

- 30.3. The Contractor shall not introduce any private venture funding under this Contract without the prior written agreement of the same by the Authority's Commercial Officer. Unless the Contractor obtains such prior written approval from the Authority's Commercial Officer then it shall be assumed that no private venture funding was introduced.

#### **Records**

- 30.4. Throughout the Term and for not less than Ten (10) years thereafter, the Contractor shall maintain at least one copy ("the Control Copy") of information utilised or generated in performance of the Contract.
- 30.5. Any background information within the Control Copy shall be clearly identified and duly marked.
- 30.6. The Control Copy shall be maintained in media and formats agreed to by the Authority but in any event shall be presented in a logical format which readily facilitates third party understanding of the information and its association with any article, process or material including without limitation, all drawings, specifications and all documentation necessary to operate or further modify any computer software developed in the performance of the Contract.
- 30.7. Except as authorised in writing by the Authority the Control Copy shall not be altered by the Contractor in any way which would render it inconsistent with the build standards of associated equipment including software or processes utilised in performance of the Contract.

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- 30.8. The Control Copy shall be deemed to be the property of the Authority and shall be conspicuously marked by the Contractor as such, and the Authority may take possession of the Control Copy notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party. Copies of information held on the Control Copy shall be supplied by the Contractor as required from time to time by the Authority. The Contractor shall be entitled to be reimbursed the reasonable costs of delivery.
- 30.9. If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, then the Contractor's obligations contained in Clauses 30.4 shall be governed by that contract after the Expiry Date or early termination.
- 30.10. If no further contract is entered into between the Parties after the Expiry Date or early termination, the Contractor shall offer in writing to supply the Control Copy to the Authority and shall give the Authority six (6) calendar months to confirm whether it requires the Control Copy to be supplied. If the Authority notifies the Contractor within such six (6) calendar months that it requires the Control Copy to be supplied, the Contractor shall supply it to the Authority within two (2) weeks of receipt of such request. If the Authority notifies the Contractor within such six (6) calendar months that it does not require the Control Copy to be supplied or does not respond to the Contractor within such six (6) calendar months period, the Contractor may, subject to compliance with any other contractual or legal obligation to retain the relevant data, destroy or amend the Control Copy as it sees fit.

**31. Sub-Contracts**

- 31.1. The Contractor shall not place any sub-contract or order involving design or development of the equipment required under this Contract without the prior approval of the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract).
- 31.2. The Contractor shall not enter into any commitment in relation to such work until the sub-contractor has entered into an agreement with the Authority in the form set out in DEFFORM 177 Design Rights and Patents (Sub-contractors Agreement). Wherever possible, the request for approval should be accompanied by two copies of the agreement signed by the sub-contractor. If in any case the Contractor is unable to comply with this Clause, he shall report the matter to the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract) and await further instructions before placing the sub-contract.

**32. Access to Material Information/Data/Software ('Information')**

- 32.1. In the event of termination in accordance with DEFCON 514 (Material Breach), the Authority shall have a royalty free right to use all Information in whatever format generated or used by the Contractor specifically for the purposes of managing and administering the Contract and necessary for the Authority and/or a third party or Successor Contractor to manage and complete the Contract.
- 32.2. Within thirty Business Days of receiving formal notice of termination under DEFCON 514 (Material Breach), the Contractor shall provide a list of all Information referred to in Clause 33.1 to the Authority's Contracting Officer identified in DEFFORM 111 to this Contract and agree the nature and timescale for the transfer of such information.
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- 32.3. Where the Contract is terminated in accordance with DEFCON 656B (Termination for Convenience) then such rights to Information shall be limited to Information deliverable under the Contract and excludes rights to the Contractor proprietary information.
- 32.4. Where the Contract is to be terminated in accordance with DEFCON 514 (Material Breach) or DEFCON 656B (Termination for Convenience) or the Authority seeks to place a Contract with a third party on expiry of this Contract to provide support under the scope of this Contract, then the Authority and such third party shall provide the Contractor with a written undertaking that the Contractor's Information provided under this Clause shall be protected and not used by such third party other than for the purposes of managing and administering the Contract or for the purposes of a similar Contract between the Authority and such third party.
- 32.5. Upon the Contractor's receipt of the Authority's formal written notice of termination, the Authority will be deemed to have overall responsibility for managing the Exit Plan as detailed in Clause 38. The Contractor shall remain responsible for all aspects of the Contractor's performance of the Contract for the period of notice to the date of Contract termination
- 32.6. The Authority shall confirm its receipt of any assets returned or transferred by the Contractor to the Authority in writing.

**33. Cyber Security**

- 33.1. The Cyber Risk Level assigned to this Contract is **VERY LOW** as defined in DEFSTAN 05-138 (Cyber Security for Defence Suppliers). As detailed in Defcon 658 (Cyber) an Annual Supplier Assurance will be provided to the Authority by the Contractor on the anniversary of the Commencement Date.

**34 Transfer of Undertakings (Protection of Employment)**

- 34.1. The Contractor shall comply with the terms and conditions of Annex O– Transfer of Undertakings (Protection of Employment).

**35. Publicity**

- 35.1. The Contractor shall not publicise, either directly or indirectly in any media release, public announcement, or public disclosure relating to this Contract or its subject matter, in any promotional or marketing materials, lists, or business presentations, without the written consent of the Authority for each such use or release in accordance with this Clause save as required through statutory regulations.

**36. Information Regarding Prosecution or Proceedings**

- 36.1. If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the Law related to the subject matter or the execution of the Contract, against the Contractor, any servants, employees or agents of the Contractor and any subcontractors engaged in performance of the Contract, the Contractor shall immediately notify the Authority.



- 36.2. Any convictions during the Term of the Contract for criminal breaches of the Law related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a Material Breach of the Contract.

**37. Exit Plan - OBLIGATIONS TO ASSIST POST TERMINATION OR EXPIRY**

- 37.1. The Contractor shall comply with the Exit Plan at Annex k.

The Contractor shall produce a Draft Contract Exit Plan which shall be submitted to the Authority for approval within 6 weeks of the Commencement of Contract Date. The plan shall include a programme of systematic reviews, audits and verification activities necessary to ensure implementation of and compliance with the requirements of the Contract.

- 37.2. The Contractor shall update the Exit Plan:

38.2.1. every twelve (12) Months throughout the Term; and

38.2.2. upon receipt of a notice of termination or 6 months prior to the end of the contract Term.

- 37.3. All such updates must be approved by the Authority and shall include any changes which the Authority requires in order to achieve a controlled Contract exit and transition to a New Provider or, if there is no New Provider, to the Authority.

- 37.4. The Contractor shall ensure that it is able to implement the Exit Plan throughout the Term.

- 37.5. All costs incurred in developing, updating and implementing the Exit Plan shall be borne by the Contractor.

**38. EARNED VALUE MANAGEMENT**

- 38.1 The Authority reserves the right to invoke the Earned Value Management (EVM) methodology in line with DEFCON 647. Tenderers should not price for this activity and should the Authority decide to invoke EVM a review of pricing will be undertaken at the time.

**39. TERMINATION**

- 38.1 In the event that a Contractor Default has occurred, the Authority shall, without prejudice to any other remedies set out in the contract, have the right to terminate the whole or any part of the Contract in accordance with this Condition 39 (Termination).

**Rectifiable Contractor Default**

- 38.2 Where a Rectifiable Contractor Default has occurred, and the Authority wishes to terminate the Contract in whole or in part, the Authority shall serve a notice on the Contractor (a" **Rectification Notice**"), specifying:

- 39.2.1 the nature of the Rectifiable Contractor Default that has occurred, giving reasonable details; and
- 39.2.2 where appropriate, the part of the Contract that the Authority wishes to terminate
- 38.3 Except where otherwise agreed with the Authority, the Contractor shall have 10 (ten) Business Days from receipt of the Rectification Notice to submit to the Authority in writing a plan describing the proposed rectification programme including a detailed description and schedule of the activities necessary to rectify the breach and restore the Contractors performance to the standard required under the Contract (a “**Rectification Plan**”)
- 38.4 Where the Authority agrees with the Rectification Plan, and the Contractor implements it to the reasonable satisfaction of the Authority within the time period set out in such Rectification Plan and agreed by the Authority, the Rectification Notice shall be deemed to be revoked.
- 38.5 Where the Authority does not agree with the Rectification Plan, the Parties shall consult in good faith to agree a revised Rectification Plan.
- 38.6 In the event the Parties fail to agree a Rectification Plan within 20 (twenty) Business Days of its formal submission to the Authority in accordance with Clause 39.3 (Termination), or the Contractor fails to provide the Rectification Plan within the agreed period specified in Clause 39.3 the Authority may, at its sole discretion, issue a notice to the Contractor, specifying the date upon which the whole or any part (as appropriate) of the Contract will terminate.
- 38.7 If the Contractor fails to implement the Rectification Plan to the reasonable satisfaction of the Authority within the time period set out in such Rectification Plan and agreed by the Authority, the Authority may, at its sole discretion, issue a notice to the Contractor, specifying the date upon which the whole or any part (as appropriate) of the Contract will terminate.

#### **Non-Rectifiable Contractor Default**

- 38.8 Where a Non-Rectifiable Contractor Default has occurred, and the Authority wishes to terminate the Contract in whole or in part, the Authority shall serve a notice on the Contractor, specifying:
- 39.8.1 the type and nature of the Non-Rectifiable Contractor Default that has occurred, giving reasonable details.
- 39.8.2 that the Authority is terminating the Contract or part thereof
- 39.8.3 where relevant, the part of the Contract that the Authority is terminating; and
- 39.8.4 the date on which the Contract (or part thereof) will terminate, which shall be no less than 20 (twenty) Business Days after the date of such notice unless the Authority specifies otherwise.
- 38.9 Following the issue of a notice pursuant to Clauses 38.6.8 (Termination) (a “**Default Termination Notice**”) and where the Authority is terminating the whole of the Contract, the Contract shall terminate on the date specified in the relevant Default Termination Notice.
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### **Partial Termination**

- 38.10 Where the Authority has issued a Default Termination Notice specifying that it is terminating part of the Contract for the Contractor Default, the Parties shall, owe each other no further obligations in respect of such part of the Contract as is specified in the Default Termination Notice from the date specified in such Default Termination Notice.
- 38.11 For the avoidance of doubt, where Clause 39.10 (Termination) applies the Parties shall continue to fulfil their respective obligations in respect of those parts of the Contract that are not identified in the Default Termination Notice as being terminated.

### **Consequences of Termination**

- 38.12 In the event of termination or partial termination by the Authority pursuant to Condition 40 (Termination):

38.12.1 the Authority shall have the right to:

39.12.1.1 claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

- a. carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
- b. obtaining the Contractor Deliverables in substitution from another supplier.

39.12.2 take over from the Contractor at a fair and reasonable price all unused and undamaged material and any Contractor Deliverables that consist of physical items and are in the course of manufacture, or overhaul, which have not already been paid for, that are:

- i) in the possession of the Contractor or its Sub-Contractors at the Contract Termination Date; and
- ii) properly arising from or in connection with this Contract, provided by or supplied to the Contractor for the performance of this Contract, provided that the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may reasonably specify, a list of all such items.

If the Authority decides to exercise its rights under this Clause 39.12.1 the Contractor will then deliver such material and services or co-operate with the arrangements for its collection in accordance with the directions of the Authority (who shall pay to the Contractor fair and reasonable handling and delivery charges incurred by the Contractor in complying with such directions). Ownership and risk of loss and damage to such items shall pass to the Authority on delivery/collection.

39.12.3 in respect of Contractor Deliverables provided, the Authority will pay the Contractor the

price payable pursuant to Condition 21 (Pricing) relevant to the period of performance (payable in accordance with the express terms of this Contract) up to the date of a Default Termination Notice or a notice sent by the Authority in accordance with Clauses 39.6, 39.7 39.8 or 39.11 (Termination), whichever is applicable, calculated in accordance with Condition 21 (Pricing); and

38.12.4 The Parties agree that recovery by the Contractor in each case under Sub-Clauses 39.12.2 to 39.12.3 above shall be subject to the following:

- i) the Contractor shall take all reasonable steps to mitigate such costs, commitments, liabilities and/or expenditure;
- ii) such costs, commitments, liabilities and/or expenditure shall be subject to verification and agreement by the relevant Authority audit processes as being due in accordance with the express provisions of this Clause;
- iii) the Contractor shall submit fully itemised and costed lists of any costs, commitments, liabilities and/or expenditure that it claims under Clause 39.12.4 (such costs being the “**Actual Cost of Termination**”) with supporting evidence;